2021

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2021

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2021 REGULAR SESSION
OF THE LEGISLATURE

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 7

Title 25

(As Revised 2018)

For latest statutes or assistance call 1-800-833-9844

By the Editorial Staff of the Publisher

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

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PUBLISHER'S FOREWORD

Statutes

The 2021 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2021 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 4th Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2021 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2021 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

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CHAPTER 1. PUBLIC OFFICERS AND EMPLOYEES; GENERAL PROVISIONS

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CHAPTER 1.

PUBLIC OFFICERS; GENERAL PROVISIONS

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25-1-12.	Certain public officers and employees required to give individual bond or be covered by blanket bond.
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25-1-87.	Marking publicly owned or leased vehicle; exceptions; effect of noncompliance.

§ 25-1-5. Date terms begin for district, county, and beat officers.

OPINIONS OF THE ATTORNEY GENERAL

While the legislature expressly requires that the first Monday in January is the date in which a term of office is to start, and no earlier, an oath of office may be made before the first Monday in January. Sykes, Nov. 6, 1991, A.G. Op. #91-0814.

§ 25-1-7. Vacancy in office.

OPINIONS OF THE ATTORNEY GENERAL

Fire district commission members are authorized to holdover until their successor has been lawfully appointed and has qualified to assume the office. Strickland, Oct. 3, 1991, A.G. Op. #91-0712.

Appointed municipal election commissioners are entitled to serve and perform statutory duties of commissioners until their successors are appointed and qualified. Schissel Oct. 22, 1993, A.G. Op. #93-0752.

Based on Section 25-1-7, individuals who are serving in the positions of city attorney, municipal judge, municipal prosecutor, public defender and dilapidated housing prosecutor from a previous term and, who were not confirmed by the city council prior to serving that term, are holdover employees until either they or their successors are appointed by the mayor and confirmed by the city council. Schissel, March 6, 1996, A.G. Op. #96-0088.

There is no authority for three members of the Mississippi State Board of Medical Licensure whose terms expire on June 30, 2000 to continue to serve after that date if they have not been reappointed at that time by the Governor, and no other individuals have been appointed to fill their seats. Burnett, June 12, 2000, A.G. Op. #2000-0295.

If a town forgoes holding a general election in the event no person qualifies to run in that election, the incumbent officials would hold over after the expiration of their regular terms of office until such time as new officers are elected; further, any action taken by those officers during this hold-over period would be valid and binding as official acts. Craft, Apr. 27, 2001, A.G. Op. #01-0254.

When a city council tables an appointment recommended by the mayor for a position held by a person whose term has expired, the official whose term has expired continues to serve as a holdover. Bowman, Oct. 19, 2001, A.G. Op. #01-0647.

§ 25-1-9. Oath of office taken.

OPINIONS OF THE ATTORNEY GENERAL

A newly appointed district attorney must take and file an oath of office in accordance with §§ 25-1-9 and 25-1-11 before he or she is entitled to any compensation. Anderson, Mar. 1, 2002, A.G. Op. #02-0062.

§ 25-1-11. Oath of office filed.

OPINIONS OF THE ATTORNEY GENERAL

A newly appointed district attorney must take and file an oath of office in accordance with §§ 25-1-9 and 25-1-11 before he or she is entitled to any compensation. Anderson, Mar. 1, 2002, A.G. Op. #02-0062.

§ 25-1-12. Certain public officers and employees required to give individual bond or be covered by blanket bond.

(1) Notwithstanding any other provision of law to the contrary, any public officer or employee handling or having the custody of public funds, by virtue of his or her office or employment, shall give an individual bond or be covered by a blanket bond. The amount of such bonds shall not be less than Twenty-five Thousand Dollars ($25,000.00) for each public officer or employee, unless a specific amount is otherwise required by law. The provisions of this section shall not apply to any public officer or employee whose activity of handling or having custody of public funds is incidental to his or her employment or job duties, as defined by the regulations of the State Auditor's office.

(2) All individual bonds and blanket bonds as required by this section shall follow the form and content as provided in Section 25-1-15.

HISTORY: Laws, 2021, ch. 422, § 1, eff from and after July 1, 2021.

§ 25-1-15. Conditions of official bonds; new bonds to be secured every four years.

JUDICIAL DECISIONS

4. Liability on bonds.

Surety which issued two public-official bonds for a member of a county board of supervisors was not liable under both bonds because the insurer complied with the board's request that the first bond be converted from a one-year to a four-year bond, cancelled the first bond, and issued a second bond for which the board paid the premium. Therefore, the first bond was unenforceable for lack of premium payment because the only consideration contemplated for the first bond was the premium payment, but the board did not make this payment. State Auditor Shad White & Holmes Cty. v. Nationwide Mut. Ins. Co., — So. 3d —, 2021 Miss. LEXIS 198 (Miss. Aug. 5, 2021).

OPINIONS OF THE ATTORNEY GENERAL

A principal is not a public employee who is required to give an individual bond as provided by 25-1-15(2); therefore, such positions may be covered by a blanket bond so long as the blanket bond comports with the requirements of 25-1-15(4) wherein each position and the requisite amount of coverage for each position is listed. Middleton, April 26, 1996, A.G. Op. #96-0222.

Section 37-39-21 is written in the singular which would indicate that any and all purchase agents must be covered by an individual bond pursuant to Section 25-1-15(2). Middleton, April 26, 1996, A.G. Op. #96-0222.

§ 25-1-17. Official bonds payable to state.

OPINIONS OF THE ATTORNEY GENERAL

Bond which secures the patient funds held by the state must be payable to the state. Hendrix, Jan. 3, 2003, A.G. Op. #02-0753.

§ 25-1-21. Affidavit of worth.

OPINIONS OF THE ATTORNEY GENERAL

A review of all the sections in this chapter show that these statutes are intended to apply to elected or appointed officials having a duty to the public in general, and that they do not apply to guardians, executors or administrators of individuals or their estates. Clapp, Nov. 27, 1991, A.G. Op. #91-0876.

§ 25-1-25. New bond required in certain cases.

OPINIONS OF THE ATTORNEY GENERAL

The county tax assessor's office must be open for business on all business days from 8:00 a.m. to 5:00 p.m., except when the board of supervisors authorizes it to be closed at 12:00 noon one business day of each week, or all day Saturday of each week, or at 12:00 noon on Saturday and at 12:00 noon on one additional business day of each week. Richardson, June 28, 2002, A.G. Op. #02-0315.

§ 25-1-31. Personal bonds.

OPINIONS OF THE ATTORNEY GENERAL

A review of all the sections in this chapter show that these statutes are intended to apply to elected or appointed officials having a duty to the public in general, and that they do not apply to guardians, executors or administrators of individuals or their estates. Clapp, Nov. 27, 1991, A.G. Op. #91-0876.

If a county officer is unable to be bonded by a surety company he may follow the procedures outlined in the second paragraph of Section 25-1-31. Carson, December 7, 1995, A.G. Op. #95-0779.

§ 25-1-33. Premiums on official bonds.

OPINIONS OF THE ATTORNEY GENERAL

No authority requires the county to bond the county medical examiner. However, a county may, within its discretion, provide such a bond. See Section 25-1-33. Brooks, December 20, 1996, A.G. Op. #96-0835.

Counties may not pay the premium on the required bond for official court reporters of the chancery and circuit court, but may pay the premium for the bonds of county court reporters and may pay the dues for the membership of the county court reporter in the court reporter's association upon making a determination that such dues are reasonable and necessary to the performance of the court reporter's duties. Ross, February 26, 1999, A.G. Op. #99-0053.

A school district's responsibility for the payment of the premiums on the surety bonds of its members is for the amount that is necessary to obtain a good and sufficient bond; the district would not be required to bear the expense of that portion of a premium that is over and above the amount determined to be necessary to obtain a good and sufficient bond. Wyly, Jan. 10, 2003, A.G. Op. #02-0761.

Section 25-1-33 applies to bonds given by a school board member pursuant to Section 37-6-15(1). Seal, Apr. 18, 2003, A.G. Op. 03-0170.

Payment of a premium that is over and above what is necessary to acquire a good and sufficient bond as determined by a school board would be a waste of taxpayers' money. Seal, Apr. 18, 2003, A.G. Op. 03-0170.

§ 25-1-37. Acts of de facto officer valid.

JUDICIAL DECISIONS

3. Particular de facto officers—In general.

4. —Person appointed, deputized, or commissioned.

Officer was sworn in by a justice court judge to fulfill the duties of a justice court deputy clerk in June 2015, and he was acting as a de facto officer and possessed the requisite authority to administer the oath and swear to the charging affidavit; therefore, any defects that may have existed in the appointment of the officer did not negate that he was acting under the color of appointment at the time he issued defendant's affidavit. Oliver v. State, — So. 3d —, 2019 Miss. App. LEXIS 18 (Miss. Ct. App. Jan. 15, 2019).

OPINIONS OF THE ATTORNEY GENERAL

Acts of de facto members of municipal party executive committees are valid pursuant to Miss. Code Section 25-1-37. Jackson, May 12, 1993, A.G. Op. #93-0292.

Although the statute gives the actions taken by "de facto" officers validity, it does not entitle these individuals to receive a salary or per diem for their services. Burnett, June 12, 2000, A.G. Op. #2000-0295.

A newly elected school board member who casts a vote prior to being bonded and taking the oath of office violates Section 97-11-41; however, any vote so taken may be binding, as that of a de facto officer under Section 25-1-37. Mabry, Apr. 27, 2001, A.G. Op. #01-0239.

Officers appointed by the Governor in vacation and not confirmed by the Senate, but who have taken the oath of office, may be "de facto" officers; and actions taken by "de facto" officers are valid. Janus, Oct. 5, 2001, A.G. Op. #01-0612.

§ 25-1-45. Civil liability for failure to perform duty.

JUDICIAL DECISIONS

1. In general.

Although the statute may give standing to any interested party to sue an official's bonding company for recovery of damages, those damages must be caused by the failure of that official to perform a mandatory duty; here, appellants could not prove that the Bolivar County Board of Supervisors failed in any duty required by law. Because zoning enforcement is a discretionary duty, any cause of action pleaded under the statute fails as a matter of law. Short v. Bolivar Cty. Bd. of Supervisors, 303 So. 3d 87, 2020 Miss. App. LEXIS 470 (Miss. Ct. App. 2020).

OPINIONS OF THE ATTORNEY GENERAL

If an officer or employee of the state or subdivision fails or refuses to make any report as set forth in Section 7-7-218, and that failure or refusal constitutes a breach of his or her faithful performance of duty, then recovery may be sought from the applicable bond. Bryant, May 5, 2000, A.G. Op. #2000-0185.

§ 25-1-47. Defense of public employees and satisfaction of judgment.

OPINIONS OF THE ATTORNEY GENERAL

Although statute uses word "municipality," term has consistently been construed to include counties; statute does authorize county board of supervisors discretion to settle claims for construction of new well. Whitten, Feb. 14, 1990, A.G. Op. #90-0080.

Statute would authorize school district, in its discretion, to pay and satisfy claim of parents whose minor child received injuries while playing on swing set on school playground. Lowrey, August 29, 1990, A.G. Op. #90-0638.

County may settle claim against county employee for actions taken in his or her capacity as employee. Stone, Sept. 6, 1990, A.G. Op. #90-0664.

If board of supervisors finds that legal action concerns actions taken by zoning commission's attorney, while acting in official capacity as attorney for commission, then board has discretion to pay for attorney's legal defense. Gex, April 25, 1991, A.G. Op. #91-0171.

A municipal authority may not provide legal counsel for an alderman when the lawsuit brought against the alderman was an election contest and not a lawsuit making a claim as a result of the alderman's official actions. Causey, Nov. 14, 1991, A.G. Op. #91-0831.

County has discretionary authority to settle claims for calves which escaped through fence damaged by county road crew. Bishop, Sept. 2, 1992, A.G. Op. #92-0683.

Verdict for punitive damages against mayor may be paid by board of aldermen. Woods, Sept. 2, 1992, A.G. Op. #92-0697.

County board of supervisors may employ legal counsel for defense of any civil or criminal claim or action brought against any member or members of board as result of their actions while acting in official capacity. Walters, Dec. 9, 1992, A.G. Op. #92-0968.

Attorney for state mental healthcare facility can provide legal representation for employee in tort and criminal actions if Board grants official advance approval of such representation. Jackson, Dec. 30, 1992, A.G. Op. #92-0944.

If governing authorities of city find, consistent with fact and subject to judicial review, that where civil action arose out of actions of mayor, chief of police and director of public works, while acting in capacity of their offices or positions, then municipal governing authorities may, under Miss. Code Section 25-1-47(1), in their discretion, hire additional attorneys to defend mayor, chief of police and director of public works; fact that city participates in municipal association liability plan does not prohibit city from hiring additional counsel pursuant to above statute to defend mayor, chief of police and director of public works. Shepard, Feb. 3, 1993, A.G. Op. #93-0046.

Miss. Code Section 25-1-47 authorizes and empowers county within discretion of board of supervisors to provide legal counsel for defense of any claim or action, and to settle any claim or pay any judgment against any officer or employee of county sued for actions done during course of employment; this is discretionary and not mandatory. Welch, June 9, 1993, A.G. Op. #93-0295.

Word "municipality" in Section 25-1-47 includes public entities of every kind in State, and includes county board of supervisors. Barry, Feb. 24, 1994, A.G. Op. #93-0969.

Board of Supervisors must exercise sound discretion in deciding whether settlement of claim and expenditure of public funds for civil penalty for EPA violations is in best interest of public and must determine that settlement is based upon lawful claim against county. Barry, Feb. 24, 1994, A.G. Op. #93-0969.

While municipality is prohibited from providing free water service to an individual, municipal governing authorities, upon a proper finding of fact that citizen was overcharged for his water service, would be authorized to allow appropriate credit toward the payment of future water bills as settlement of claim pursuant to Section 25-1-47(2). Baker, March 17, 1994, A.G. Op. #94-0111.

Section 25-1-47 does not authorize use of public funds for defense of public officers or employees in actions brought against them by the state to collect public funds misappropriated or otherwise illegally applied or withheld by said officers or employees. McDowell, March 24, 1995, A.G. Op. #95-0151.

If a service provider presents a claim to the Board of Education, the board may resort to Section 25-1-47 and settle the claim upon a finding in the minutes that the service was needed, the service was rendered and the cost for same is just, reasonable and equitable. Wallace, April 14, 1995, A.G. Op. #95-0234.

Federal Wage and Hours Laws will take precedent over any conflicting state laws or local ordinances, or orders entered by the board of supervisors. The county may settle such a claim. See Section 19-3-40. Barry, June 14, 1996, A.G. Op. #96-0228.

When a board of supervisors is of the opinion that an elected official's refusal to respond to requests made under the Public Records Act is in violation of the Act, as well as the stated policy of the Board with regard to providing such records, the board may but is not required under Section 25-1-47, to provide legal counsel to this elected official to defend litigation filed to secure such records. Meadows, November 1, 1996, A.G. Op. #96-0663.

Pursuant to Section 25-1-47(2) if a church presents to the board a legitimate, pending claim against officers, agents or employees of the school board, then at the discretion of the school board, the board may negotiate a settlement which includes a conveyance of title to the property authorized by resolution entered on the minutes. Such resolution should recite all the findings of the board, including the bona fide claim made, all the factors considered by the board, that the property is of no value and no use to the district, and that settlement is advantageous to the school district and necessary to avoid the expenses of litigation and any possibility of liability. Young, November 8, 1996, A.G. Op. #96-0729.

If the county does not choose to provide a bond for the medical examiner, and the medical examiner is sued in her official capacity, the county would be obligated to provide legal counsel. See Sections 25-1-47 and 11-46-1, et seq. Brooks, December 20, 1996, A.G. Op. #96-0835.

Although this section authorizes a county to provide legal counsel for the defense of any claim against an officer or employee of the county while acting in his official capacity, the governing authorities of the county must first grant advance approval of such representation. Trapp, Nov. 7, 1997, A.G. Op. #97-0671.

Overtime compensation claims ordered by the federal Department of Labor are claims against municipalities that can be deducted by the George County Board of Supervisors from the allocated budget of the office of Tax Assessor and Collector whose employees did not accept the county's compensatory time policy. Dickerson, March 20, 1998, A.G. Op. #98-0161.

If an inmate sues the county board of supervisors and the sheriff, and the trial occurs two years later out of county where overnight stay becomes a necessity, the county may reimburse the sheriff and supervisors for out of pocket expenses for the hotel, meals, and mileage, even if some of these elected officials are no longer holding public office at the time of the trial. Mullins, November 13, 1998, A.G. Op. #98-0679.

An agency should authorize reimbursement of funds for defense of a criminal complaint only at such time that the criminal charges are successfully rebuffed by the employee. Warren, December 11, 1998, A.G. Op. #98-0670.

If a county board of supervisors finds, consistent with fact and spread upon the minutes, that, in driving without the proper license, a county employee was acting in his official capacity and within the scope of his employment, then the board of supervisors may reimburse the employees for assessed fines. Clements, April 23, 1999, A.G. Op. #99-0181.

Where an "insurance" pool paid an amount to the claimant, and the claimant accepted that payment, and executed a release or waiver in favor of the city, once such a settlement was accepted, the claimant was barred from making any additional claim for damages. To preserve the right to pursue the full amount claimed, the claimant should have refused the settlement tendered by the pool. Thus, as there remains no further legal obligation, the city cannot now supplement the amount accepted by the claimant from the insurance pool in settlement of the claim. McLaurin, July 16, 2004, A.G. Op. 04-0251.

Subject to the appropriate findings, the county board of supervisors had the authority to provide defense counsel for individual public defender attorneys in an action arising from complaints against the public defender system used by the county. Ross, Aug. 27, 2004, A.G. Op. 04-0386.

Upon a finding of a school board that the actions complained of in a lawsuit filed against the superintendent arise out of and in the course of her performance of the duties of superintendent of a school district, this section permits the school board to incur expenses related to the defense of those claims. Wyly, Dec. 20, 2004, A.G. Op. 04-0631.

A county may enter private land and remove tree stumps and debris as part of a settlement with the landowner. Clanton, Feb. 10, 2006, A.G. Op. #06-0023.

Section 25-1-47 does not authorize the use of public funds for the defense of public officers or employees in cases brought against them by the state to collect public funds misappropriated or otherwise illegally applied or withheld by said officers or employees. McDonald, May 12, 2006, A.G. Op. 06-0174.

§ 25-1-53. Nepotism prohibited.

OPINIONS OF THE ATTORNEY GENERAL

Facts showed that husband was not appointing authority at time his wife was hired and simultaneous employment of husband and wife by city did not constitute nepotism; except for purposes of inquiring or receiving information or advice, council deals with municipal departments and personnel solely through mayor. Norman, Jan. 25, 1990, A.G. Op. #90-0051.

Position of road hand/machine operator/heavy equipment operator/road maintenance individual does not fall within class of employment enumerated or contemplated by statute (officer, clerk, stenographer, deputy or assistant); accordingly, employment of brother of member of board of supervisors would not constitute violation of nepotism statute. Lamar, Feb. 22, 1990, A.G. Op. #90-0094.

Where Board of Trustees of State Institutions of Higher Learning and institutional executive officer is hiring authority for positions at institution, violation of nepotism statute did not occur since employees in question were related within third degree to individuals other than members of Board of Trustees or executive officer. Hefner, Feb. 23, 1990, A.G. Op. #90-0111.

Kinship by marriage ends upon dissolution of marriage by divorce or death; former sister-in-law of board member, if otherwise qualified, may be lawfully appointed to serve as municipal clerk. Berryhill, June 13, 1990, A.G. Op. #90-0405.

Since hospital administrator/husband is not "appointing authority", arrangement to hire wife of hospital administrator as employee of hospital will not violate nepotism statute. Hurt, June 18, 1990, A.G. Op. #90-0415.

Appointed municipal clerk is subject to same employment provisions as are regular municipal employees and therefore, insofar as nepotism statute is concerned would be in same situation as "employee" and is eligible to remain in office subsequent to time her kinsman was elected to board of aldermen. Fortner, August 22, 1990, A.G. Op. #90-0627.

Hiring of sister of member of board of supervisors by tax assessor and collector to be deputy assessor would not violate nepotism statute; Since tax assessor and collector is hiring authority, not board of supervisors, employee would not be related to hiring authority within third degree according to civil law. McGregor, August 29, 1990, A.G. Op. #90-0651.

Where sole authority for employment and discharge of employees expressly rests with commission, not executive director, commission may not hire as clerk, stenographer, officer, deputy or assistant, son or daughter of one of members of Board of Commissioners of Mississippi Coast Transportation Authority. Ward, Oct. 25, 1990, A.G. Op. #90-0784.

Three-part analysis should be employed to determine whether employment relationship violates nepotism statute: (1) Are parties related within third degree? (2) Is relative who is public official "appointing authority"? (3) Is job included in list of prohibited positions? Harrington, May 30, 1991, A.G. Op. #91-0404.

Whether employee is hired for summer only or permanently is irrelevant to question of whether employment violates nepotism statute. Harrington, May 30, 1991, A.G. Op. #91-0404.

The mayor and board of aldermen may hire the son of an aldermen as a ground man, meter reader or for any position in the utility department which is not an officer, clerk, stenographer, deputy or assistant. Brown, Nov. 4, 1991, A.G. Op. #91-0817.

A Board of Aldermen is not prohibited from hiring the son-in-law of an Alderman as the attorney for the Board. Spicer, Dec. 18, 1991, A.G. Op. #91-0955.

Coroner/county medical examiner investigator cannot appoint his son as deputy county medical examiner investigator. Beech, Feb. 26, 1992, A.G. Op. #91-0077.

Pursuant to the nepotism statute, a board of supervisors is prohibited from compensating the son of a county medical examiner investigator for his services as deputy county medical examiner investigator. Sims, June 17, 1992, A.G. Op. #92-0423.

As a deputy who is to be paid out of the public funds, a deputy medical examiner or medical examiner investigator is subject to the nepotism statute, regardless of whether he actually receives the compensation to which he is entitled. Sims, June 17, 1992, A.G. Op. #92-0423.

Because the sheriff, not the board of supervisors, is responsible for the actual employment of deputies, the employment by a sheriff of a deputy who is the son of a supervisor does not present a violation of the nepotism statute. Hatcher, June 17, 1992, A.G. Op. #92-0433.

Nepotism statute prohibits city council from appointing to Municipal Elections Commission uncle by marriage of one of council members. Hicks, Sept. 16, 1992, A.G. Op. #92-0677.

Nepotism statute prohibits city board of aldermen from appointing sister-in-law of alderman to city's Election Commission. Navarro, Sept. 16, 1992, A.G. Op. #92-0684.

There is no apparent prohibition against deputy circuit clerk's daughter-in-law serving as county election commissioner. Snow, Sept. 30, 1992, A.G. Op. #92-0659.

Miss. Code Section 25-1-53, Mississippi's nepotism statute, prohibits hiring of person who is related by blood or marriage within third degree to hiring authority; this statute does not apply to person who is already in position before relative became hiring authority. Breland, Jan. 6, 1993, A.G. Op. #92-0983.

Attorney General's office has consistently construed Miss. Code Section 25-1-53 strictly. Hathorn, Apr. 28, 1993, A.G. Op. #93-0271.

Consistent with strict interpretation of Miss. Code Section 25-1-53, dispatcher is not "officer, clerk, stenographer, deputy, or assistant" such as is contemplated by nepotism statute; accordingly, Miss. Code § 25-1-53 does not prohibit board of supervisors from employing sister-in-law of one of board's members as dispatcher. Hathorn, Apr. 28, 1993, A.G. Op. #93-0271.

Mississippi's nepotism statute, Miss. Code Section 25-1-53, does not apply to employment of physicians, nurses or medical technicians by governing boards of community hospitals; however, statute does apply to employment of officers, clerks, stenographers, deputies or assistants; statute does not apply to employee who was in department or institution before kinsman became hiring authority. Hollimon, May 12, 1993, A.G. Op. #93-0274.

Police officer who is not chief of police does not fall under nepotism statute and therefore board of aldermen could hire father and brother-in-law of one of members of board of aldermen as police officers. Brooks, June 16, 1993, A.G. Op. #93-0420.

Board of supervisors is ultimately appointing authority of assistant purchasing clerk in all counties, regardless of whether they operate under beat system or unit system and therefore county administrator was prohibited from appointing nephew of county supervisor as assistant purchasing clerk. Trapp, July 14, 1993, A.G. Op. #93-0482.

Administrator who implements federal law such as Americans with Disabilities Act is not one of five listed positions in statute and therefore board of supervisors or county administrator could appoint nephew of board member as administrator in county charged with responsibility of implementing Americans with Disabilities Act. Trapp, July 14, 1993, A.G. Op. #93-0482.

Because mayor is appointing authority and city council has no confirmation authority, there would be no violation of nepotism statute for husband of council member to serve as public defender. Perkins, July 14, 1993, A.G. Op. #93-0494.

Nepotism only applies to specific jobs mentioned in statute, namely "officer, clerk, stenographer, deputy or assistant"; therefore, it would not appear that employment by mayor and aldermen of mayor's nephew as "staffing specialist" comes within prohibition of statute. Ellis Aug. 18, 1993, A.G. Op. #93-0583.

In determining whether nepotism statute applies, it is necessary to apply three-part analysis: (1) are parties related within third degree; (2) is relative who is public official appointing authority; (3) is position one of five enunciated positions in statute. Gilfoy Aug. 26, 1993, A.G. Op. #93-0613.

There does not appear to be prohibition against board of aldermen employing son of alderman as laborer, as that is not one of five specified positions in nepotism statute; however, as niece is within third degree of kinship prohibited by statute, and clerk is one of enunciated positions set out in nepotism statute, it would be in violation of Section 25-1-53 for niece of alderman to be employed in that capacity unless she was serving as city clerk at time her uncle or aunt became alderman. Gilfoy Aug. 26, 1993, A.G. Op. #93-0613.

Board of aldermen of municipality may retain attorney who is brother to one of members of board. Childre Sept. 1, 1993, A.G. Op. #93-0545.

Nepotism statute does not apply to position of municipal judge; therefore, Board of Aldermen may appoint municipal judge who is brother of alderman. Childre Sept. 1, 1993, A.G. Op. #93-0545.

Nepotism statute does not apply to position of department head of municipality; therefore, Board of Aldermen may appoint as department head person who is brother-in-law of alderman, i.e., person whose wife's sister is married to alderman. Childre Sept. 1, 1993, A.G. Op. #93-0545.

Nepotism statute does not prohibit sheriff from appointing sister-in-law as dispatcher and/or jailer if she will not be deputy sheriff but it does prohibit her appointment as deputy sheriff. McMillan Sept. 23, 1993, A.G. Op. #93-0554.

Nepotism statute does not prohibit Mayor and Board of Aldermen from hiring brother-in-law of alderman as Director of Parks and Recreation. Dennis Oct. 28, 1993, A.G. Op. #93-0725.

Person may be employed as Director of Transition Program at Chemical Dependency Unit of which her husband is Director since position of "director" is not one of prohibited classes of employment listed in statute. Littlejohn Dec. 15, 1993, A.G. Op. #93-0944.

There was no prohibition against municipal governing authorities employing stepson of alderman as certified operator over Clean and Wastewater Department since this was not a position covered by nepotism statute. Pittman, March 17, 1994, A.G. Op. #94-0106.

The employment of the son-in-law of the mayor of a "code charter" municipality as a law enforcement officer does not violate the provisions Section 25-1-53 (the nepotism statute). Austin, April 19, 1995, A.G. Op. #95-0180.

Section 25-1-53 makes it unlawful to appoint a relative as an assistant who is to be paid out of the public funds. However, the appointment of an unpaid volunteer does not violate this section. Harper, June 28, 1995, A.G. Op. #95-0360.

Section 25-1-53 would not prohibit employment of persons not related by blood or marriage within the third degree. Griffith, July 19, 1995, A.G. Op. #95-0288.

Under Section 25-1-53, an ex-wife is not related by blood or marriage to a judge. Therefore, the nepotism statute does not prohibit a judge from hiring an ex-wife for the position of Secretary III. Landrum, August 23, 1995, A.G. Op. #95-0583.

Section 25-1-53 only applies to those positions specifically listed in the statute, therefore a supervisor may hire his brother-in-law as a road hand. Johnston, December 21, 1995, A.G. Op. #95-0841.

If a person was recently elected to serve as County Supervisor and the Supervisor's son has been an employee of the district for six years prior to the election, it would appear to be acceptable for the son to continue to work in his present position under Section 25-1-53. Fortier, February 9, 1996, A.G. Op. #96-0027.

The County Board of Supervisors may employ the brother-in-law of one of its members as a full time mechanic to service and/or repair all county vehicles and equipment since, Section 25-1-53 only prohibits an official from employing or appointing a relative within the third degree to the following positions: "officer, clerk, stenographer, deputy, or assistant". Griffin, March 22, 1996, A.G. Op. #96-0126.

Pursuant to Section 25-1-53 the brother-in-law of the alderman may not be employed as an officer, clerk, stenographer, deputy or assistant since he is related by marriage within the third degree to the alderman. A city is not prohibited from hiring the alderman's brother-in-law in some other capacity or position. Tyner, September 6, 1996, A.G. Op. #96-0476.

Pursuant to Section 25-1-53, a stepfather or stepniece would be related by marriage within the third degree. Therefore, such person could not serve as an officer, clerk, stenographer, deputy or assistant. Greathree, September 20, 1996, A.G. Op. #96-0619.

The hiring as a police officer of the first cousin of a police chief, considered to be related in the fourth degree, would not violate the nepotism statute. Pickens, July 3, 1997, A.G. Op. #97-0365.

The nepotism statute is violated if the son of a county medical examiner is appointed as a deputy county medical examiner even if the deputy agrees to serve without compensation. McWilliams, July 18, 1997, A.G. Op. #97-0414.

An appointment of the brother of an alderman as the police chief of a municipality would violate the nepotism statute. Boland, Aug. 1, 1997, A.G. Op. #97-0439.

Miss. Code Section 25-1-53 would not restrict the employment of a public relations assistant, notwithstanding the fact that the assistant is related within the third degree to a member of the appointing authority, because a public relations assistant is not one of the five positions to which Section 25-1-53 applies. Pogue, Aug. 1, 1997, A.G. Op. #97-0440.

The nepotism statute is violated if a person is appointed to a public job by a public officer related to them within the third degree and they receive insurance benefits, the premiums for which are paid out of public funds. Bryant, Aug. 29, 1997, A.G. Op. #97-0488.

Nepotism statute prohibiting a board of alderman from appointing a person who is related by blood or marriage within the third degree to a board member to one of five specific positions, that is, officer, clerk, stenographer, deputy or assistant, applies by its own terms to five positions only and, therefore, does not preclude the mayor and aldermen from appointing the mayor's brother as an operator/laborer in the water department. Thomas, January 9, 1998, A.G. Op. #97-0833.

A mayor who appoints his brother to a school board, which is an office of the executive government, will violate the Nepotism Statute unless the brother forgoes all compensation and payment. Cochran, March 6, 1998, A.G. Op. #98-0106.

The nepotism statute does not prohibit the sheriff from hiring a cousin of his wife as chief deputy. Entrekin, May 14, 1998, A.G. Op. #98-0255.

The nepotism statute does not prohibit a board of supervisors from hiring a nephew of a member of the board as a laborer or light equipment operator. Entrekin, May 22, 1998, A.G. Op. #98-0272.

The nepotism statute does not prohibit the president of a community college from hiring the daughter-in-law of a member of the board of trustees as a recruiter. Summers, June 5, 1998, A.G. Op. #98-0305.

The nepotism statute does not prohibit a municipality from hiring the son of an alderman as a full time policeman who is not the chief. Tyner, August 14, 1998, A.G. Op. #98-0419.

The board of aldermen may hire the brother of an alderman as fire chief. Collins, August 21, 1998, A.G. Op. #98-0514.

It would be a violation of the statute for a member of a governing authority empowered to vote for the appointment of a commissioner to be related to such appointee within the third degree. Wolfe, October 9, 1998, A.G. Op. #98-0614.

There is no violation of the statute where the relative appointed to a position is to receive no payment or compensation to be paid from public funds. Wolfe, October 9, 1998, A.G. Op. #98-0614.

The appointment of the son of a member of the Board of Commissioners of the City of Clarksdale to the Clarksdale Public Utilities Commission would violate the provisions of the nepotism statute, unless he were to agree to waive all compensation. Twiford, December 23, 1998, A.G. Op. #98-0751.

A stepdaughter is related by marriage within the third degree, and a city council may not appoint a stepdaughter of a council member as the city clerk. Lowe, December 23, 1998, A.G. Op. #98-0774.

The statute does not prohibit a board of aldermen from hiring the son of the mayor as a laborer who works with the gas system and the water and sewer systems. Gifford, February 26, 1999, A.G. Op. #99-0093.

The board of aldermen of a code charter municipality may appoint the nephew of the wife of the mayor to the position of Maintenance Manger and Utility Supervisor. Hedgepeth, June 11, 1999, A.G. Op. #99-0285.

The mayor and aldermen of a city may appoint the son of the fire chief as a firefighter in the municipal fire department. Mitchell, August 27, 1999, A.G. Op. #99-0456.

The statute prohibits a sheriff from hiring his sister-in-law to one of the five specifically listed positions; however, the statute does not prohibit a sheriff from hiring his sister-in-law to a position that is not specifically listed. Callahan, Jan. 7, 2000, A.G. Op. #99-0704.

The appointment of the stepdaughter of an alderman to the position of secretary would be in violation of the statute. Mitchell, Feb. 25, 2000, A.G. Op. #2000-0079.

A board of supervisors may terminate an employee for any reason, including violation of the nepotism statute, that is consistent with constitutional law; the action of the board should be simply to terminate a person whose employment violates the nepotism statute (unless, of course, the employee comes within the grandfather provisions of Section 25-1-53). Holmes, April 7, 2000, A.G. Op. #2000-0152.

The statute does not prohibit the board of supervisors from hiring the son of a supervisor as an E-911 Coordinator, Emergency Management Coordinator, and Fire Coordinator of the county. Hallman, May 5, 2000, A.G. Op. #2000-0233.

It would not constitute a violation of the statute for the superintendent to recommend his spouse for a position as a secretary with the same school district. Wyly, May 12, 2000, A.G. Op. #2000-0216.

An applicant for a position in the accounting department is not prohibited from being employed by the county board of supervisors as long as the employee is not a purchasing clerk, receiving clerk, or inventory clerk. Smith, Oct. 20, 2000, A.G. Op. #2000-0606.

A town may hire the brother-in-law and son-in-law of an alderman as regular police officers. LeSure, Oct. 27, 2000, A.G. Op. #2000-0631.

The statute does not prohibit the hiring of a mayor's cousin to serve in the position of town clerk. Youngman, Feb. 23, 2001, A.G. Op. #2001-0014.

The statute does not apply to computer support personnel and, therefore, did not prohibit a county board of supervisors from hiring two individuals as computer support personnel, one of whom was married to a county supervisor. Griffith, Mar. 16, 2001, A.G. Op. #01-0127.

The sheriff, rather than the board of supervisors, is responsible for the actual employment of deputies and, therefore, the employment by a sheriff of a deputy who is the son of the predecessor sheriff and the son-in-law of a member of the board of supervisors does not present a violation of the statute. Shaw, Jan. 25, 2002, A.G. Op. #02-0016.

Employment by the sheriff of an auxiliary deputy sheriff who is the son of a member of the board of supervisors does not violate the statute. Shaw, Jan. 24, 2002, A.G. Op. #02-0017.

The governing authorities of a town are not prohibited from hiring the son of an alderman as a police officer who is not the chief. Hatcher, Mar. 22, 2002, A.G. Op. #02-0126.

One sister of a county tax collector could retain her job in the tax collector's office after the county tax collector retired, even if another sister of the county tax collector was elected to that position; however, she could not be subsequently transferred or promoted to another prohibited position if the other sister became the tax collector. Andrzejewski, May 3, 2002, A.G. Op. #02-0229.

A district attorney may hire his nephew to work in his office as a domestic violence investigator. Bowen, July 15, 2002, A.G. Op. #02-0333.

A person in an employing or appointing authority may not hire his or her niece as an officer, clerk, stenographer, deputy or assistant if the niece is to be paid out of public funds. Sigalas, Dec. 20, 2002, A.G. Op. #02-0739.

Employment of the brother of a member of the board of trustees of a regional medical center as a security guard does not violate the nepotism statute. Williamson, Sept. 27, 2002, A.G. Op. #02-0545.

In a situation in which an employee and appointing authority are not related when the employment relationship begins, but become related through marriage afterwards, the statute prohibiting nepotism is not applicable. Keating, Oct. 11, 2002, A.G. Op. #02-0580.

The nepotism statute prohibits the governing authorities of a city from reappointing the brother-in-law of the newly elected mayor to a new term as a commissioner of the housing authority. Rushing, Jan. 3, 2003, A.G. Op. #02-0759.

Section 25-1-53 would not bar the father from continued employment by the board of supervisors if his son is subsequently elected to the position of supervisor. Torrey, Feb. 14, 2003, A.G. Op. #03-0023.

Hiring of the spouse of the Chief Engineer of the Mississippi Department of Transportation as an engineer in the Office of State Aid Road construction does not create a violation of the nepotism statute. James, Feb. 7, 2003, A.G. Op. #03-0052.

The board of aldermen of a town may hire the grandson-in-law of the mayor as the municipal attorney. Fielding, Jan. 24, 2003, A.G. Op. #03-0019.

There would be no violation of the nepotism statute if the brother-in-law of the mayor appointed as a commissioner of the Housing Authority waives all salary, compensation and expenses. Rushing, Apr. 7, 2003, A.G. Op. #03-0040.

An individual appointed to serve on the board of a municipal separate school district pursuant to Section 37-7-203 is considered an officer of the municipality, and the nepotism statute prohibits the hiring of an individual related within the third degree to a member of the appointing authority to one of five specific positions including "officer." Ponthieux, Apr. 11, 2003, A.G. Op. 03-0167.

It is the act of appointment of a disqualified person that is the violation of the nepotism statute. Ponthieux, Apr. 11, 2003, A.G. Op. 03-0167.

Section 25-1-55 renders the appointing authority liable for all amounts paid to a person appointed in violation of the nepotism statute. Ponthieux, Apr. 11, 2003, A.G. Op. 03-0167.

Since it is the board of supervisors that hires the deputy justice court clerks and not the justice court judges, there is no prohibition to a county hiring the daughter-in-law of a justice court judge to be a deputy justice court clerk. Fortier and Babb, May 16, 2003, A.G. Op. 03-0216.

It would violate the nepotism statute for an individual to be appointed to a county development commission by a county board of supervisors whose membership includes the individual's step-uncle. Allen, July 18, 2003, A.G. Op. 03-0340.

County tax collector's employment of her husband as a part time mobile home inspector would violate the nepotism statute. Creekmore, July 25, 2003, A.G. Op. 03-0379.

The nepotism statute applies to a recreation authority created by an interlocal cooperation agreement between a city and county. Turnage, July 25, 2003, A.G. Op. 03-0382.

A board of aldermen is prohibited by the nepotism statute from appointing a sister of a board member as the city clerk of a code charter municipality. Crosthwait, Aug. 8, 2003, A.G. Op. 03-0416.

A board of aldermen is not prohibited by the nepotism statute from appointing the niece of the city marshall as the city clerk of a code charter municipality. Crosthwait, Aug. 8, 2003, A.G. Op. 03-0416.

A violation of the nepotism statute would occur if the individual currently serving as deputy clerk were promoted to the position of city clerk while her sister is a member of the board of aldermen, and this would be so regardless of whether the sister recuses herself from any votes on the question. Moore, Aug. 29, 2003, A.G. Op. 03-0469.

The appointment of the nephew of a member of the City Council to the position of airport director does not violate the nepotism statute. Alexander, Feb. 2, 2004, A.G. Op. 04-0021.

The appointment of the husband of an Alderman's niece to the position of school board trustee would violate the nepotism statute. Should the school board member agree to serve without compensation, the violation would be avoided. Ainsworth, Feb 2, 2004, A.G. Op. 04-0022.

The appointment of an individual whose spouse is a nurse at a county nursing home would not result in a violation of this section. Bowman, Feb. 27, 2004, A.G. Op. 04-0071.

There is no conflict between this section and § 25-4-105. The prohibitions contained therein are cumulative and individuals must comply with both statutes. Bowman, Feb. 27, 2004, A.G. Op. 04-0071.

For purposes of the nepotism statute, the circuit clerk is the is the appointing authority of a deputy who is being paid by the board of supervisors. Dulaney, Aug. 27, 2004, A.G. Op. 04-0413.

County hospital's hiring as a receptionist an individual whose husband is the grandson of a hospital trustee would not violate the nepotism statute. Stark, July 29, 2005, A.G. Op. 05-0364.

In order to avoid a violation of the nepotism statute, a school board member must not only waive the per diem, but must also waive reimbursement for expenses and travel which is otherwise available to members for travel to board meetings and any training sessions or regional or national education meetings. Donovan, Oct. 14, 2005, A.G. Op. 05-0427.

A school board member who has waived compensation in order to avoid a violation of the nepotism statute is in no position to designate the distribution of those funds or to donate those funds to any organization. Donovan, Oct. 14, 2005, A.G. Op. 05-0427.

The hiring of a sister of a member of the board of supervisors by the sheriff would not violate Section 25-1-53. Shepard, Dec. 27, 2005, A.G. Op. 05-0614.

A judge may not lawfully appoint his or her brother to the position of court administrator. Lewis, Mar. 30, 2006, A.G. Op. 06-0064.

There is no violation of the nepotism statute if the board of aldermen employs the mayor's son as the town's water operator or wastewater operator. Todd, July 25, 2006, A.G. Op. 06-0294.

A coroner may not appoint his brother as a deputy coroner. Hampton, Aug. 7, 2006, A.G. Op. 06-0345.

A full-time firefighter, like all other municipal officers and employees, is prohibited from being a commissioner of the municipal housing authority under Miss. Code Ann. § 43-33-7. The appointment of a spouse of a member of the board of aldermen as a commissioner of the municipal housing authority violates the Nepotism Statute, Miss. Code Ann. § 25-1-53, except that a person serving as commissioner prior to election of their spouse to the board of aldermen may be reappointed. Tucker, March 15, 2007, A.G. Op. #07-00130, 2007 Miss. AG LEXIS 103.

Subject to the Mississippi Nepotism Statute, Miss. Code Ann. § 25-1-53, an individual may not be subsequently transferred or promoted to another prohibited position after a relative within the third degree becomes the hiring authority. Hathorn, March 9, 2007, A.G. Op. #07-00129, 2007 Miss. AG LEXIS 96.

§ 25-1-59. Vacancy by removal or default.

OPINIONS OF THE ATTORNEY GENERAL

By virtue of statute, alderman who removes himself from district (ward) from which he was elected by moving to new home in another ward, vacates his office. Belk, March 15, 1990, A.G. Op. #90-0178.

If, as matter of fact, official in question has removed himself to another state, his office became vacant and he relinquished all rights to compensation as of date of said removal. Walman, Sept. 19, 1990, A.G. Op. #90-0707.

The Municipal Election Commission has the responsibility of making the factual determination as to whether a qualified elector has abandoned the municipality as his place of residence or whether he is only temporarily away from his residence. Thomas, Feb. 4, 1992, A.G. Op. #92-0015.

A candidate for appellate judge must be resident of district for office being sought. Harvey Aug. 25, 1993, A.G. Op. #93-0572.

Member of municipal civil service commission who moves outside corporate limits of municipality he was appointed to serve vacates his office. Schissel Nov. 24, 1993, A.G. Op. #93-0848.

Justice court judges and candidates for the office of justice court judge must be lawful residents of the district they serve or seek to serve. Bates, February 8, 1995, A.G. Op. #95-0060.

If a board of supervisors makes the determination that a justice court judge has, as a matter of fact, established his residence outside the district he was elected to serve, the vacancy would be filled in accordance with Section 25-1-59. If the vacancy occurs in the last year of a term, a person appointed to fill a vacancy in accordance with the above cited statute would serve the remainder of the term or until the first Monday in January, of the next year. Bates, February 8, 1995, A.G. Op. #95-0060.

Upon a determination by the board of aldermen that one of its members has moved outside the corporate limits of the municipality he or she was elected to serve as opposed to temporarily living outside the municipality, the office becomes vacant by operation of law and the vacancy must be filled in accordance with the provisions of § 23-15-857. Morgan, Oct. 4, 2002, A.G. Op. #02-0576.

The question of whether an official has "removed" out of the jurisdiction for which he was elected or appointed is one of fact. The municipal governing board has the responsibility to make the factual determination as to whether an officer has abandoned the municipality as his place of residence or whether he is only temporarily away from his residence. Tanner, Aug. 20, 2003, A.G. Op. 03-0441.

Whether a municipal officer has "removed" out of the jurisdiction he was elected to serve is a question of fact to be determined by the municipal governing authorities, subject to judicial review. Carouthers, Jan. 6, 2005, A.G. Op. 05-0633.

If a board of aldermen determines, consistent with the facts, that a member is no longer a resident of the ward he was elected to serve and is not merely temporarily residing outside his ward but has abandoned same, a vacancy would have to be declared and a special election set in accordance with Section 23-15-857. Skellie, Aug. 18, 2006, A.G. Op. 06-0377.

§ 25-1-69. Officer not to carry or deposit public funds outside state.

OPINIONS OF THE ATTORNEY GENERAL

Electronic transfers to out-of-state banks for investment purposes are not prohibited by Section 25-1-69 so long as such funds are credited as being on deposit with a qualified county depository and are secured as provided by law. James, August 16, 1996, A.G. Op. #96-0503.

§ 25-1-73. Officers liable for costs of collection of public funds improperly withheld.

OPINIONS OF THE ATTORNEY GENERAL

Planning and Development Districts are either public entities or instrumentalities of political subdivisions of the state and, as such, are subject to audit by the State Auditor. McLeod, Nov. 26, 2003, A.G. Op. 03-0573.

§ 25-1-77. Bureau of Fleet Management created; purpose; duties; purchase, rent, lease or acquisition of motor vehicle for state use; certain documentation required; bureau may seize and dispose of certain state agency vehicles; reports; retention of vehicles seized under forfeiture laws; exemption of state institution of higher learning.

(1) There is created the Bureau of Fleet Management within the Office of Purchasing, Travel and Fleet Management, Department of Finance and Administration, for the purposes of coordinating and promoting efficiency and economy in the purchase, lease, rental, acquisition, use, maintenance and disposal of vehicles by state agencies. The Executive Director of the Department of Finance and Administration may employ a Fleet Management Officer to manage the bureau and carry out its purposes. The bureau may employ other suitable and competent personnel as necessary. The bureau shall encourage the use of fuel efficient or hybrid vehicles appropriate for the state agency's intended purpose and, when feasible, the use of alternative fuels or energy sources, including, but not limited to, ethanol, biodiesel, natural gas or electric power. The bureau shall prepare a fiscal analysis of the cost-effectiveness of using alternative fuel or energy source vehicles by state agencies, and submit a report of that fiscal analysis to the Legislature by December 15, 2009. Not later than July 1, 2014, at least seventy-five percent (75%) of all vehicles to which the bureau holds title in the name of the state must have a fuel economy estimate by the United States Environmental Protection Agency of forty (40) miles per gallon or higher for highway driving.

(2) The Bureau of Fleet Management shall perform the following duties:

(a) To hold title in the name of the State of Mississippi to all vehicles currently in possession of state agencies as defined in Section 25-9-107(d) and to assign vehicles to such agencies for use; however, the bureau shall exempt any agency or agency vehicles from the provisions of this paragraph (a) if it determines that state or federal law requires that title be vested only in the agency;

(b) To establish rules and regulations for state agency use of vehicles;

(c) To gather information and specify proper fleet management practices for state agencies;

(d) To acquire fleet management software and require agencies to provide necessary information for the bureau to properly monitor the size, use, maintenance and disposal of the state's fleet of vehicles; the bureau shall communicate regularly with the fleet managers of each state agency to determine strengths and weaknesses of the various fleet operations; the bureau shall disseminate information to the agencies so that each can take advantage of any beneficial practices being incorporated at other entities; the bureau shall promulgate rules and regulations concerning the mileage reimbursement practices of each state agency;

(e) To carry out responsibilities relative to budget recommendations as provided in Section 27-103-129;

(f) To reassign vehicles in the possession of any state agency if the bureau believes that another state agency can make more efficient use of a vehicle; however, except as otherwise provided in Section 51-11-101, the state agency receiving the reassigned vehicle shall pay to the previous agency's special fund, or if no special fund exists to the State General Fund, the National Automobile Dealers Association (NADA) wholesale value for the vehicle or the estimated amount for which the vehicle would have sold at auction, as shall be determined by the bureau, whichever is less;

(g) To investigate at any time the vehicle usage practices of any state agency; and

(h) To require each agency to submit to the bureau a vehicle acquisition/use/disposal plan on an annual basis. From the plans received, the bureau shall evaluate the proposed plans and shall submit a recommendation to the Legislature prior to January 1 of each year.

(3) No state department, institution or agency shall purchase, rent, lease or acquire any motor vehicle, regardless of the source of funds from which the motor vehicle is to be purchased, except under authority granted by the Department of Finance and Administration. The Bureau of Fleet Management, Department of Finance and Administration, shall promulgate rules and regulations governing the purchase, rental, lease or acquisition of any motor vehicle by a state department, institution or agency with regard to the appropriateness of the vehicle to its intended use. The Bureau of Fleet Management, Department of Finance and Administration, shall only grant authority to purchase, rent, lease or acquire a motor vehicle which is the lowest cost vehicle to carry out its intended use. Before the disposal or sale of any vehicle, the Bureau of Fleet Management shall make a determination that the lifetime use and mileage of the vehicle has been maximized and that it would not be feasible for another state agency to use the vehicle.

(4) The department, institution or agency shall maintain proper documentation which provides the intended use of the vehicle and the basis for choosing the vehicle. Such documentation shall show that the department, institution or agency made diligent efforts to purchase, rent, lease or acquire a vehicle that is the lowest cost vehicle for its intended use. Such documentation shall be updated as needed when the intended use of the vehicle or any other facts concerning the vehicle are changed. All such documentation shall be approved by the State Fleet Officer prior to purchase, rental, lease or acquisition or change in use of any vehicle and shall be maintained and made available for review by the State Auditor, any other reviewing agency and the Legislature. The Bureau of Fleet Management shall immediately notify the department head of any agency that has a vehicle found to be in violation of the bureau's rules and regulations. At the same time, the bureau shall notify the Speaker of the House of Representatives and the Lieutenant Governor of its findings regarding any such vehicle. If the violation is not rectified within five (5) days of the notice, then the bureau may seize the vehicle and dispose of it as the bureau deems to be in the best interest of the State of Mississippi.

(5) On or before September 1 of each year, the Bureau of Fleet Management shall prepare and deliver to the Senate and House Appropriations Committees and the Joint Legislative Budget Committee a report containing any irregularities that it finds concerning purchases of state-owned vehicles.

(6) The Department of Public Safety and the Department of Wildlife, Fisheries and Parks may retain any vehicle seized pursuant to the forfeiture laws of this state, and the total number of vehicles assigned to each such agency shall not be reduced by the number of seized vehicles which the agency retains.

(7) The Bureau of Fleet Management, upon request, shall grant an exemption from the provisions of this section for only any vehicle assigned to a sworn officer of the Department of Public Safety or of the Agricultural and Livestock Theft Bureau of the Department of Agriculture and Commerce and used in undercover operations when the bureau determines that compliance could jeopardize the life, health or safety of the sworn officer.

(8) The provisions of this section shall not apply to any state institution of higher learning.

(9) When making requests for authority to purchase, rent, lease or acquire vehicles as provided in subsection (3) of this section, agencies shall submit the lowest cost vehicle possible to carry out its intended use. Any such request shall be in writing from the agency head, certifying the vehicle requested is the lowest cost option available and acknowledging that any request contrary to this provision shall subject the agency head to penalties as provided in Sections 25-1-91, 31-7-55 and 31-7-57, where applicable. The Bureau of Fleet Management shall only approve the lowest cost vehicle, which in its estimation, will carry out the intended use. No agency may purchase any vehicle that the Bureau of Fleet Management has disapproved as being a higher cost option.

(10) No requests authorized under subsections (3) and (9) of this section shall be approved by the Bureau of Fleet Management if the requesting agency

has not properly maintained in the fleet/asset reporting system all information required by the Bureau of Fleet Management. Agencies shall correct any inadequacies or discrepancies in the system noted by the Bureau of Fleet Management before the bureau may approve any requests.

HISTORY: Codes, 1942, § 4061-02; Laws, 1950, ch. 448, § 2; Laws, 1952, ch. 347; Laws, 1962, ch. 497, § 12; Laws, 1984, ch. 488, § 166; Laws, 2001, ch. 561, § 1; Laws, 2003, ch. 317, § 1; Laws, 2006, ch. 537, § 1; Laws, 2009, ch. 458, § 1; Laws, 2009, ch. 546, § 5; Laws, 2017, ch. 409, § 3, eff from and after July 1, 2017; Laws, 2018, ch. 356, § 6, eff from and after passage (March 15, 2018); Laws, 2020, ch. 417, § 3, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (7), inserted "or of the Agricultural and Livestock Theft Bureau of the Department of Agriculture and Commerce."

§ 25-1-83. Attending conventions, associations, or meetings.

OPINIONS OF THE ATTORNEY GENERAL

The Executive Director of the Mississippi Department of Transportation lacks authority to delegate approval of out of state travel requests. Brown, May 10, 2002, A.G. Op. #02-0242.

§ 25-1-87. Marking publicly owned or leased vehicle; exceptions; effect of noncompliance.

All motor vehicles owned or leased by the State of Mississippi or any agency, department or political subdivision thereof, which shall include counties and municipalities, when such agency or department or political subdivision, which shall include counties and municipalities, is supported wholly or in part by public taxes or by appropriations from public funds, shall have painted on both sides in letters at least three (3) inches in height, and on the rear in letters not less than one and one-half (1-1/2) inches in height, the name of the state agency or department, or political subdivision, which shall include counties and municipalities, in a color which is in contrast with the color of the vehicle; provided, however, that a permanent decal may be used in lieu of paint, and provided further, that any municipality may affix a permanent decal or design at least twelve (12) inches in height and twelve (12) inches in width on both sides of the vehicle with the name of the municipality within or across the permanent decal or design, and the permanent design or decal shall be in a color or colors which are in contrast with the color of the vehicle. No privilege license tag shall be issued for such vehicle until the name has been painted thereon or a permanent design or decal affixed thereto as required by this section. A permanent decal may be used in lieu of paint. The provisions of this paragraph shall not apply to vehicles used by the Chief Executive of the State of Mississippi, to vehicles owned or leased by the Department of Economic and Community Development, to vehicles owned or leased by the Office of the Attorney General, to not more than one (1) vehicle owned or leased by the Department of Public Safety for use by the Capitol Police, to vehicles owned or leased by the Mississippi State Board of Medical Licensure and used only by the Investigative Division of the board, to one (1) vehicle owned or leased by the Executive Director of the Department of Mental Health, to not more than one (1) vehicle owned or leased by the Mississippi Division of Medicaid, to one (1) vehicle owned or leased by the State Department of Rehabilitation Services, to one (1) vehicle owned or leased by the Mississippi Department of Transportation, to one (1) vehicle owned or leased by the Commissioner of the Mississippi Department of Corrections, to not more than three (3) vehicles owned or leased by the Department of Corrections and used only by Community Services Division officers, to not more than one (1) vehicle owned or leased by the Mississippi Department of Transportation and used only by an investigator employed by the Mississippi Department of Transportation, to not more than two (2) vehicles owned or leased by the Mississippi Department of Marine Resources, or to not more than one (1) vehicle owned or leased by the Department of Revenue; and upon receipt of a written request from the State Adjutant General, the Commissioner of Public Safety, the Director of the Alcoholic Beverage Control Division of the Department of Revenue, the Executive Director of the Mississippi Department of Wildlife, Fisheries and Parks, the Director of the Bureau of Narcotics, the Executive Officer of the Board of Pharmacy, the Executive Director of the Mississippi Gaming Commission, the State Auditor or a president or chancellor of a state institution of higher learning, the Governor may authorize the use of specified unmarked vehicles only in instances where such identifying marks will hinder official investigations, and the governing authorities of any municipality may authorize the use of specified, unmarked police vehicles when identifying marks would hinder official criminal investigations by the police. The written request or the order or resolution authorizing such shall contain the manufacturer's serial number, the state inventory number, where applicable, and shall set forth why the vehicle should be exempt from the provisions of this paragraph. In the event the request is granted, the Governor shall furnish the State Department of Audit with a copy of his written authority for the use of the unmarked vehicles, or the governing authority, as the case may be, shall enter its order or resolution on the minutes and shall furnish the State Department of Audit with a certified copy of its order or resolution for the use of the unmarked police vehicle. The state property auditors of the State Department of Audit shall personally examine vehicles owned or leased by the State of Mississippi or any agency, department or commission thereof and report violations of the provisions of this paragraph to the State Auditor and the Chairman of the Joint Legislative Committee on Performance Evaluation and Expenditure Review. Any vehicle found to be in violation of this paragraph shall be reported immediately to the department head charged with such vehicle, and five (5) days shall be given for compliance; and if not complied with, such vehicles shall be impounded by the State Auditor until properly marked or exempted.

Upon notification to the Department of Revenue by the State Auditor that any municipality or political subdivision is not in compliance with this section, the Department of Revenue shall withhold any sales tax due for distribution to any such municipality and any excise tax on gasoline, diesel fuel, kerosene and oil due any such county and for any months thereafter, and shall continue to withhold such funds until compliance with this section is certified to the Department of Revenue by the State Department of Audit.

County-owned motor vehicles operated by the sheriff's department shall not be subject to the provisions of this section, but shall be subject to the provisions of Section 19-25-15. County-owned motor vehicles operated by a family court established pursuant to Section 43-23-1 et seq., shall not be subject to the provisions of this section.

State-owned or leased motor vehicles operated by the Department of Mental Health or by facilities operated by the Department of Mental Health and used for transporting patients living in group homes or alternative living arrangements shall not be subject to the provisions of this section.

Up to four (4) passenger automobiles owned or leased by economic development districts or economic development authorities shall not be subject to the provisions of this section.

State-owned or leased motor vehicles operated by the Agricultural and Livestock Theft Bureau of the Department of Agriculture and Commerce and used to investigate livestock theft shall not be subject to the provisions of this section.

Up to three (3) motor vehicles owned or leased by the Pascagoula Municipal Separate School District for use by district security officers shall not be subject to the provisions of this section.

Up to three (3) motor vehicles owned or leased by the Department of Human Services for use only by the Program Integrity Division and the executive director shall not be subject to the provisions of this section.

Up to three (3) motor vehicles owned or leased by the Department of Insurance for use by the State Fire Marshal's Office shall not be subject to the provisions of this section.

The motor vehicles of a public airport shall not be subject to the provisions of this section upon a finding by the governing authority of such airport that marking a motor vehicle as required in this section will compromise security at such airport.

HISTORY: Codes, 1942, § 4061-07; Laws, 1950, ch. 448, § 7; Laws, 1952, ch. 358; Laws, 1956, ch. 370; Laws, 1958, ch. 467; Laws, 1962, chs. 497, 498, § 10; Laws, 1964, ch. 567, § 1; Laws, 1966, ch. 649, § 17; Laws, 1968, ch. 500, § 1; Laws, 1970, ch. 479, § 1; Laws, 1972, ch. 438, § 1; Laws, 1973, ch. 480, § 1; Laws, 1974, ch. 559, § 2; Laws, 1975, ch. 489, § 2; Laws, 1983, ch. 392, § 2; Laws, 1985, ch. 519, § 8; Laws, 1988, ch. 321; Laws, 1989, ch. 411, § 1; Laws, 1989, ch. 524, § 14; Laws, 1994, ch. 470, § 1; Laws, 1994, ch. 608, § 1; Laws, 1995, ch. 543, § 2; Laws, 1996, ch. 404, § 1; Laws, 1996, ch. 501, § 1; Laws, 1997, ch. 592, § 2; Laws, 1998, ch. 547, § 2; Laws, 1999, ch. 398, § 1; Laws, 2000, ch. 516, § 3; Laws, 2000, ch. 588, § 1; Laws, 2003, ch. 471, § 1, eff from and after July 1, 2003; Laws, 2021, ch. 403, § 20, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment substituted "Department of Revenue" for "State Tax Commission" and "Mississippi State Tax Commission" throughout the section; and in the first paragraph, in the fourth sentence, substituted "Department of Public Safety" for "Department of Finance and Administration."

OPINIONS OF THE ATTORNEY GENERAL

Municipalities may mark vehicles which are leased with permanent decal or design in lieu of paint; however, decal must be permanent and may not be decal which may be easily removed on temporary basis. Denton Oct. 6, 1993, A.G. Op. #93-0590.

Under Section 25-1-87, if the governing authorities of a municipality find and spread on the minutes that identifying marks on a particular police vehicle would hinder official criminal investigations by the police, then they may authorize that vehicle to be unmarked, subject to review by the State Auditor. However, this statute does not contemplate an unmarked vehicle being used for other than police purposes. Jones, June 28, 1995, A.G. Op. #95-0351.

An economic development district, not being an economic development authority, is subject to the purchase laws of the State of Mississippi; trustees of a development district control funds collected for support of the district and may upon a majority vote approve properly submitted bills for payment; funds must be placed in the county depository at which the development district may have its own separate account; and there is no authority for a development district to provide meals for its appointed trustees at their meetings. Munn, January 9, 1998, A.G. Op. #97-0816.

Governmental vehicles are required to have rear markings, whether by paint or decal, regardless of side markings. Bryant, March 6, 1998, A.G. Op. #98-0074.

A municipal mayor may not use an unmarked police vehicle to travel outside the municipality and around the state on municipal business. Griffin, Nov. 5, 1999, A.G. Op. #99-0584.

Municipal governing authorities do not have authority to assign an unmarked police car to a mayor for use in performing duties for the municipality, as this section makes apparent that unmarked police cars must be used for police purposes. Gregory, Oct. 18, 2002, A.G. Op. #02-0575.

Unless a specific police vehicle is designated as unmarked by the governing authority of a municipality, it must be marked in accordance with Miss. Code Ann. § 25-1-87. Sullivan, March 16, 2007, A.G. Op. #07-00115, 2007 Miss. AG LEXIS 111.

§ 25-1-97. State office hours.

OPINIONS OF THE ATTORNEY GENERAL

A governing authority may adopt leave policies which allow extra leave to an employee whose regular day off falls on a holiday. Williams, Feb. 28, 2003, A.G. Op. #03-0735.

§ 25-1-98. Opening and staffing of state offices; legal holidays, construction of "workday."

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 25-1-98 applies to state employees working on holidays, but not to county employees. Pope, Apr. 14, 1993, A.G. Op. #93-0069.

§ 25-1-99. County office hours.

OPINIONS OF THE ATTORNEY GENERAL

Statute does not state that Chancery Clerk may only conduct business between hours of 8:00 a.m. and 5:00 p.m. and actions taken by Chancery Clerk outside normal business hours are valid. Chaffin, August 16, 1993, A.G. Op. #93-0345.

Offices of all circuit and chancery clerks and sheriffs must be open from 8:00 a.m. to 5:00 p.m. Monday through Friday; board of supervisors of each county has discretionary authority to provide, by order entered on minutes, that these offices be closed at 12:00 noon on one business day and open until 12:00 noon on Saturday; term "business days" in its ordinary usage and as used in statute means Monday through Friday, therefore, unless board of supervisors adopts order authorizing offices in question to close at 12:00 noon on one business day and requiring that they be open until 12:00 noon on Saturday, offices would be required to be open from 8:00 a.m. to 5:00 p.m., Monday through Friday, excepting, State holidays. Pulliam Dec. 22, 1993, A.G. Op. #93-0978.

Under stated facts, viz., the office of the school superintendent is located upon property owned by the school district, the board of supervisors is neither obligated nor required to pay to the school district any sums therefor. Palmer, July 24, 1998, A.G. Op. #98-0417.

The county board of supervisors has discretion to set the office hours during which the justice court clerk's offfice is to be open with a clerk present, and to provide for the location of the justice court offices. Reynolds, Nov. 27, 2000, A.G. Op. #2000-0641.

The tax assessor in a county must maintain his main office within the statutory one-half mile of the courthouse if the office is not located within the courthouse itself; however, the tax assessor may also operate satellite offices outside of the statutory one-half mile in order to better serve the county. Richardson, June 28, 2002, A.G. Op. #02-0315.

The county tax assessor's office must be open for business on all business days from 8:00 a.m. to 5:00 p.m., except when the board of supervisors authorizes it to be closed at 12:00 noon one business day of each week, or all day Saturday of each week, or at 12:00 noon on Saturday and at 12:00 noon on one additional business day of each week. Richardson, June 28, 2002, A.G. Op. #02-0315.

§ 25-1-100. Certain personnel records exempt from public access requirements; exceptions.

OPINIONS OF THE ATTORNEY GENERAL

Personnel records, in broad generic terms, include evaluations, applications for employment, recommendations submitted with applications, complaints made against a teacher, disciplinary measures contemplated or taken against a teacher, and medical records, and most of these records are routinely kept in a personnel file and are not subject to disclosure. Oakes, May 20, 1992, A.G. Op. #92-0379.

Names and compensation of employees of public bodies must be made available pursuant to the Public Records Act, and any existing list of employees' resident addresses is public record, though the public entity is not required to go into personnel files to compile this information. Oakes, May 20, 1992, A.G. Op. #92-0379.

An applicant for employment as a law enforcement officer must give prior written permission to release his/her personnel files before a public body may release any such files. Chamberlin, May 1, 1998, A.G. Op. #98-0250.

If the member of a municipal governing body seeking to review personnel records has need, in the course and scope of his or her duties on behalf of the municipality, to review them, he or she should be entitled to such a review. Stovall, Jan. 6, 2004, A.G. Op. 03-0683.

The names, salaries and length of service of municipal personnel are not "personnel records" which would render that information exempt from disclosure pursuant to this section. Jones, June 4, 2004, A.G. Op. 04-0242.

Municipal governing authorities may adopt and enforce policies with regard to removal of documentation of disciplinary actions from employee personnel files; however, care should be taken that any removal of otherwise public information from city records is not done for the purpose of subverting the intent of the Mississippi Public Records Act of 1983. Mercer, Mar. 11, 2005, A.G. Op. 05-0097.

A school board may employ legal counsel other than the Board Attorney only by a majority vote of a quorum present in a properly noticed and open meeting of the board, and must officially hire an attorney before sharing any confidential personnel records. Reasons for non-renewal of a superintendent's contract and any settlement offers must be approved and recorded in the minutes at an official meeting of the board. All policies, actions, and decisions of the school board must be reasonable and necessary to meet the educational needs of the district's children. Foreman, March 30, 2007, A.G. Op. #07-00119, 2007 Miss. AG LEXIS 71.

§ 25-1-102. Certain attorneys' work product exempt from public access requirements.

OPINIONS OF THE ATTORNEY GENERAL

A sewer district is a public corporation and a body politic and as such its records are public records. However, any records which constitute the work product of an attorney or attorney-client privileged records are exempt from the Mississippi public Records Act. Cobb, Apr. 16, 2004, A.G. Op. 04-0170.

§ 25-1-105. Application of prohibition against striking to public employees and employers.

OPINIONS OF THE ATTORNEY GENERAL

Because a county development foundation, a separate corporate entity, is neither a state agency, political subdivision nor instrumentality thereof, its employees would not be entitled to membership in the Public Employees' Retirement System. Also, because the employees of the foundation are not employees of the County, the would not be entitled to the benefits the county offers its employees. Fortier, Apr. 23, 2004, A.G. Op. 03-0482.

§ 25-1-107. Date of postmark as proof of date of payment or report.

OPINIONS OF THE ATTORNEY GENERAL

A notice of withdrawal from a development district was not timely where the notice was metered, postmarked, and received after the deadline for such notices, even though the letter was dated before the deadline. Davis, Apr. 19, 2002, A.G. Op. #02-0180.

§ 25-1-111. Prevention of disclosure by state agencies of social security numbers.

OPINIONS OF THE ATTORNEY GENERAL

The tax assessor-collector may provide the sheriff with a list of those property owners who were granted homestead exemption, which list may include the social security number and the birth date of the taxpayer. Such information must remain confidential and cannot be disclosed by the sheriff to the general public. Beech, Nov. 15, 2002, A.G. Op. #02-0659.

The secretary of state may lawfully promulgate a rule requiring that Uniform Commercial Code filings not contain any Social Security numbers and providing for rejection when they do. Anderson, July 28, 2006, A.G. Op. 06-0348.

CHAPTER 3.

SALARIES AND COMPENSATION

General Provisions. 25-3-1

GENERAL PROVISIONS

Sec.

25-3-3.	Salaries of assessors also serving as tax collectors; additional compensation.
25-3-13.	Salaries of supervisors.
25-3-17.	Payment of supervisors' salaries.
25-3-19.	Salaries of county auditors.
25-3-29.	Method of paying salaries.
25-3-35.	Salaries of elected judiciary, district attorneys and legal assistants.
25-3-36.	Compensation of justice court judges; disposition of fees, costs, fines and cash bonds; justice court clerk clearing account.
25-3-63.	Local governmental entities and local school districts authorized to grant administrative leave with pay to their employees in the event of extreme weather conditions or man-made or natural disasters or emergencies.

§ 25-3-1. Classifications of counties.

Editor's Notes — Laws of 2019, ch. 485, §12, effective April 18, 2019, provides:

"SECTION 12. (1) There is created a County Elected Officials Compensation and Fees Task Force to study the structure, amounts and sources of the compensation received by, and the fees charged and collected by, the elected officials of the counties, and to make recommendations to address the compensation received by, and the fees charged and collected by, elected county officials on a long-term basis.

"(2) The task force shall make a report of its findings and recommendations to the Legislature by December 1, 2019, including any recommended legislation.

"(3) The task force shall be composed of fourteen (14) members, as follows:

"(a) A representative of the Mississippi Association of Supervisors, designated by the association;

"(b) A representative of the Mississippi Chancery Clerks Association, designated by the association;

"(c) A representative of the Mississippi Circuit Clerks Association, designated by the association;

"(d) A representative of the Mississippi Assessors and Collectors Association, designated by the association;

"(e) A representative of the Mississippi Coroner and Medical Examiners Association, designated by the association;

"(f) A representative of the Mississippi Constables Association, designated by the association;

"(g) A representative of the Mississippi Sheriffs' Association, designated by the association;

"(h) A representative of the Mississippi Justice Court Judges Association, designated by the association;

"(i) Three (3) members of the House of Representatives appointed by the Speaker of the House of Representatives; and

"(j) Three (3) members of the Senate appointed by the Lieutenant Governor.

"(4) Legislative appointments shall be made within thirty (30) days after the effective date of this section. Within fifteen (15) days thereafter on a day to be designated jointly by the Speaker of the House of Representatives and the Lieutenant Governor, the task force shall meet and organize by selecting from its membership a chair and a vice chair. The vice chair shall also serve as secretary and shall be responsible for keeping all records of the task force. A majority of the members of the task force shall constitute a quorum. In the selection of its officers and the adoption of rules, resolutions and reports, an affirmative vote of a majority of the task force shall be required. All members shall be notified in writing of all meetings, and those notices shall be mailed at least fifteen (15) days before the date on which a meeting is to be held.

"(5) The members of the task force who are not legislators shall be compensated at the per diem rate authorized by Section 25-3-69 and shall be reimbursed in accordance with Section 25-3-41 for mileage and actual expenses incurred in the performance of their duties. Legislative members of the task force shall be paid from the contingent expense funds of their respective houses in the same manner as provided for committee meetings when the Legislature is not in session. However, no per diem or expenses for attending meetings of the task force will be paid to legislative members of the task force while the Legislature is in session. No task force members may incur per diem, travel or other expense unless previously authorized by vote, at a meeting of the task force, which action shall be recorded in the official minutes of the meeting. The nonlegislative members shall be paid from any funds made available to the task force for that purpose."

OPINIONS OF THE ATTORNEY GENERAL

Any public official or employee whose pay schedule is not determined in Sections 25-3-1 through 25-3-27, may be paid bi-weekly. Officials who are not required to be paid monthly may be paid on some other basis in the discretion of the board of supervisors. Scipper, August 9, 1996, A.G. Op. #96-0489.

§ 25-3-3. Salaries of assessors also serving as tax collectors; additional compensation.

(1) The term "total assessed valuation" as used in this section only refers to the ad valorem assessment for the county and, in addition, in counties where oil or gas is produced, the actual value of oil at the point of production, as certified to the counties by the Department of Revenue under the provisions of Sections 27-25-501 through 27-25-525, and the actual value of gas as certified

by the Department of Revenue under the provisions of Sections 27-25-701 through 27-25-723.

(2) The salary of assessors and collectors of the various counties is fixed as full compensation for their services as county assessors or tax collectors, or both if the office of assessor has been combined with the office of tax collector. The annual salary of each assessor or tax collector, or both if the offices have been combined, shall be based upon the total assessed valuation of his respective county for the preceding taxable year in the following categories and for the following amounts:

(a) For counties having a total assessed valuation of Three Billion Dollars ($3,000,000,000.00) or more, a salary of Seventy Thousand Five Hundred Sixty Dollars ($70,560.00);

(b) For counties having a total assessed valuation of at least Two Billion Dollars ($2,000,000,000.00) but less than Three Billion Dollars ($3,000,000,000.00), a salary of Sixty-seven Thousand Two Hundred Dollars ($67,200.00);

(c) For counties having a total assessed valuation of at least One Billion Dollars ($1,000,000,000.00) but less than Two Billion Dollars ($2,000,000,000.00), a salary of Sixty-four Thousand Five Hundred Seventy-five Dollars ($64,575.00);

(d) For counties having a total assessed valuation of at least Five Hundred Million Dollars ($500,000,000.00) but less than One Billion Dollars ($1,000,000,000.00), a salary of Sixty-one Thousand Four Hundred Twenty-five Dollars ($61,425.00);

(e) For counties having a total assessed valuation of at least Two Hundred Fifty Million Dollars ($250,000,000.00) but less than Five Hundred Million Dollars ($500,000,000.00), a salary of Fifty-eight Thousand Eight Hundred Dollars ($58,800.00);

(f) For counties having a total assessed valuation of at least One Hundred Fifty Million Dollars ($150,000,000.00) but less than Two Hundred Fifty Million Dollars ($250,000,000.00), a salary of Fifty-six Thousand Seven Hundred Dollars ($56,700.00);

(g) For counties having a total assessed valuation of at least Seventy-five Million Dollars ($75,000,000.00) but less than One Hundred Fifty Million Dollars ($150,000,000.00), a salary of Fifty-five Thousand One Hundred Twenty-five Dollars ($55,125.00);

(h) For counties having a total assessed valuation of less than Seventy-five Million Dollars ($75,000,000.00), a salary of Fifty Thousand Nine Hundred Twenty-nine Dollars ($50,929.00).

(3) In addition to all other compensation paid pursuant to this section, the board of supervisors shall pay to a person serving as both the tax assessor and tax collector in their county an additional Five Thousand Dollars ($5,000.00) per year.

(4) The annual salary established for assessors and tax collectors shall not be reduced as a result of a reduction in total assessed valuation. The salaries shall be increased as a result of an increase in total assessed valuation.

(5) In addition to all other compensation paid to assessors and tax collectors in counties having two (2) judicial districts, the board of supervisors shall pay such assessors and tax collectors an additional Three Thousand Five Hundred Dollars ($3,500.00) per year. In addition to all other compensation paid to assessors or tax collectors, in counties maintaining two (2) full-time offices, the board of supervisors shall pay the assessor or tax collector an additional Three Thousand Five Hundred Dollars ($3,500.00) per year.

(6) In addition to all other compensation paid to assessors and tax collectors, the board of supervisors of a county shall allow for such assessor or tax collector, or both, to be paid additional compensation when there is a contract between the county and one or more municipalities providing that the assessor or tax collector, or both, shall assess or collect taxes, or both, for the municipality or municipalities; and such assessor or tax collector, or both, shall be authorized to receive such additional compensation from the county and/or the municipality or municipalities in any amount allowed by the county and/or the municipality or municipalities for performing those services.

(7) When any tax assessor holds a valid certificate of educational recognition from the Mississippi Cooperative Extension Service or is a licensed appraiser under Section 73-34-1 et seq., he shall receive an additional One Thousand Five Hundred Dollars ($1,500.00) annually beginning the next fiscal year after completion. When any tax assessor is a licensed state certified Residential Appraiser (RA) or licensed state certified Timberland Appraiser (TA) under Section 73-34-1 et seq., or when any tax assessor holds a valid designation from the International Association of Assessing Officers as a Cadastral Mapping Specialist (CMS) or Personal Property Specialist (PPS) or Residential Evaluation Specialist (RES), he shall receive an additional Six Thousand Five Hundred Dollars ($6,500.00) annually beginning the next fiscal year after completion. When any tax assessor holds the valid designation of Certified Assessment Evaluator (CAE) from the International Association of Assessing Officers or is a state certified General Real Estate Appraiser (GA) under Section 73-34-1 et seq., he shall receive an additional Eight Thousand Five Hundred Dollars ($8,500.00) annually beginning the next fiscal year after completion.

(8) The salaries provided for in this section shall be the total funds paid to the county assessors and tax collectors and shall be full compensation for their services, with any fees being paid to the county general fund.

(9) The salaries provided for in this section shall be payable monthly on the first day of each calendar month by chancery clerk's warrant drawn on the general fund of the county; however, the board of supervisors, by resolution duly adopted and entered on its minutes, may provide that such salaries shall be paid semimonthly on the first and fifteenth day of each month or every two (2) weeks pursuant to Section 25-3-29. If a pay date falls on a weekend or legal holiday, salary payments shall be made on the workday immediately preceding the weekend or legal holiday.

HISTORY: Codes, 1942, § 4160-01; Laws, 1968, ch. 369, § 7; Laws, 1970, ch 401, §§ 1 and 2; Laws, 1974, ch. 349; Laws, 1977, ch. 443; Laws, 1980, ch. 497, § 1; Laws, 1983, ch. 526, § 1; Laws, 1985, ch. 513, § 1; Laws, 1988, ch. 433, § 1; Laws, 1989, ch. 335, § 1; Laws, 1990, ch. 314, § 1; Laws, 1991, ch. 382, § 1; Laws, 1993, ch. 550, § 3; Laws, 1997, ch. 570, § 1; Laws, 2004, ch. 505, § 1, eff October 1, 2004; Laws, 2019, ch. 485, § 3, eff from and after January 1, 2020; Laws, 2020, ch. 354, § 1, eff from and after passage (approved June 25, 2020); Laws, 2020, ch. 435, § 1, eff from and after passage (approved July 2, 2020).

Joint Legislative Committee Notes — Section 1 of Chapter 354, Laws of 2020, effective from and after passage (approved June 25, 2020), amended this section. Section 1 of Chapter 435, Laws of 2020, effective from and after passage (approved July 2, 2020), also amended this section. As set out above, this section reflects the language of Section 1 of Chapter 435, Laws of 2020, which contains language that specifically provides that it supersedes § 25-3-3 as amended by Chapter 354, Laws of 2020.

Editor's Notes — Laws of 2019, ch. 485, § 14, provides as follows:

"SECTION 14. This act will take effect and be in force from and after January 1, 2020, except for Section 11, which shall take effect and be in force from and after July 1, 2019, and Sections 12 and 13, which shall take effect and be in force from and after the passage of this act [approved April 18, 2019]."

Amendment Notes — The 2019 amendment, effective January 1, 2020, substituted "Department of Revenue" for "State Tax Commission" twice in (1); in (2), added (a) and redesignated former (a) through (f) as (b) through (g), rewrote (b), which read: "For counties having a total assessed valuation of Two Billion Dollars ($2,000,000,000.00) or more, a salary of Sixty-four Thousand Dollars ($64,000.00)," substituted "Sixty-four Thousand Five Hundred Seventy-five Dollars ($64,575.00)" for "Sixty-one Thousand Five Hundred Dollars ($61,500.00)" in (c), "Sixty-one Thousand Four Hundred Twenty-five Dollars ($61,425.00)" for "Fifty-eight Thousand Five Hundred Dollars ($58,500.00)" in (d), "Fifty-eight Thousand Eight Hundred Dollars ($58,800.00)" for "Fifty-six Thousand Dollars ($56,000.00)" in (e), "Fifty-six Thousand Seven Hundred Dollars ($56,700.00)" for "Fifty-four Thousand Dollars ($54,000.00)" in (f), "Fifty-five Thousand One Hundred Twenty-five Dollars ($55,125.00)" for "Fifty-two Thousand Five Hundred Dollars ($52,500.00)" in (g), deleted former (g), which read: "For counties having a total assessed valuation of at least Thirty-five Million Dollars ($35,000,000.00) but less than Seventy-five Million Dollars ($75,000,000.00), a salary of Forty-eight Thousand Five Hundred Dollars ($48,500.00)," and substituted "Seventy-five Million Dollars ($75,000,000.00), a salary of Fifty Thousand Nine Hundred Twenty-nine Dollars ($50,929.00)" for "Thirty-five Million Dollars ($35,000,000.00), a salary of Forty-one Thousand Five Hundred Dollars ($41,500.00)" in (h).

The first 2020 amendment (ch. 354), effective June 25, 2020, in (7), substituted "Mississippi Cooperative Extension Service" for "International Association of Assessing Officers."

The second 2020 amendment (ch. 435), effective July 2, 2020, in (7), substituted "Mississippi Cooperative Extension Service" for "International Association of Assessing Officers"; and in (9), added "or every two (2) weeks pursuant to Section 25-3-29."

OPINIONS OF THE ATTORNEY GENERAL

County tax collectors are entitled to be paid additional compensation for collecting city taxes on motor vehicles if they are collecting such taxes by virtue of written contract or interlocal agreement between county and municipality or municipalities in county and if there is not effective municipal order requiring collection of such taxes by county tax collector as authorized by Section 27-51-29. Shaw, June 23, 1993, A.G. Op. #93-0460.

The plain language of Section 25-3-3 allows a board of supervisors, in its discretion, to pay an assessor-tax collector an additional $3,500.00 when that assessor-tax collector maintains two full-time offices. Shaw, January 10, 1996, A.G. Op. #95-0808.

The term "total assessed valuation" in §§ 25-3-3 and 25-3-9 includes the assessed valuation of any properties for which a fee in lieu of taxes has been negotiated pursuant to § 27-31-104. Bailey, March 26, 1999, A.G. Op. #99-0134.

Where a board of supervisors is given the discretion to allow an additional $3,500.00 compensation to an assessor-collector who maintains two full-time offices, the board has discretion to allow a lesser amount. Reynolds, May 3, 2002, A.G. Op. #02-0230.

§ 25-3-7. State contribution to compensation of assessors.

OPINIONS OF THE ATTORNEY GENERAL

No authority can be found for an information technology services board member to hold over and continue to serve after the expiration of his or her term of office. Litchliter, Apr. 14, 2006, A.G. Op. 06-0125.

§ 25-3-9. Salaries of county prosecuting attorneys.

OPINIONS OF THE ATTORNEY GENERAL

County prosecuting attorney may represent county in civil forfeiture proceedings; compensation to be paid to county attorney for such services would have to be included in county attorney's salary. Swayze Sept. 7, 1993, A.G. Op. #93-0533.

The term "total assessed valuation" in §§ 25-3-3 and 25-3-9 includes the assessed valuation of any properties for which a fee in lieu of taxes has been negotiated pursuant to § 27-31-104. Bailey, March 26, 1999, A.G. Op. #99-0134.

The salary established for a county attorney by this section comprises the "earned compensation" addressed in § 25-11-103(k). Compton, Mar. 31, 2003, A.G. Op. #03-0024.

Provided it is the duty of the county prosecuting attorney to appear and prosecute the particular case at issue, the $3.00 item of cost may be taxed against a defendant where he enters a plea on a criminal charge and is convicted thereof, on or before the initial hearing/docket call court date, and also where the case is initially docketed for trial and then the defendant later enters a plea of guilty on or before that trial date. Johnson, Sept. 22, 2006, A.G. Op. 06-0432.

§ 25-3-13. Salaries of supervisors.

(1) The salaries of the members of the boards of supervisors of the various counties are fixed as full compensation for their services.

The annual salary of each member of the board of supervisors shall be based upon the total assessed valuation of his respective county for the preceding taxable year in the following categories and for the following amounts:

(a) For counties having a total assessed valuation of less than Thirty Million Dollars ($30,000,000.00), a salary of Twenty-nine Thousand Eight Hundred Seventy Dollars ($29,870.00);

(b) For counties having a total assessed valuation of at least Thirty Million Dollars ($30,000,000.00), but less than Fifty Million Dollars

($50,000,000.00), a salary of Thirty-three Thousand Two Hundred Sixty-nine Dollars ($33,269.00);

(c) For counties having a total assessed valuation of at least Fifty Million Dollars ($50,000,000.00), but less than Seventy-five Million Dollars ($75,000,000.00), a salary of Thirty-four Thousand Seven Hundred Eleven Dollars ($34,711.00);

(d) For counties having a total assessed valuation of at least Seventy-five Million Dollars ($75,000,000.00), but less than One Hundred Twenty-five Million Dollars ($125,000,000.00), a salary of Thirty-five Thousand Seven Hundred Forty-one Dollars ($35,741.00);

(e) For counties having a total assessed valuation of at least One Hundred Twenty-five Million Dollars ($125,000,000.00), but less than Three Hundred Million Dollars ($300,000,000.00), a salary of Forty-one Thousand Six Hundred Twelve Dollars ($41,612.00);

(f) For counties having a total assessed valuation of at least Three Hundred Million Dollars ($300,000,000.00), but less than One Billion Dollars ($1,000,000,000.00), a salary of Forty-six Thousand Forty-one Dollars ($46,041.00);

(g) For counties having a total assessed valuation of One Billion Dollars ($1,000,000,000.00), but less than Two Billion Dollars ($2,000,000,000.00), a salary of Forty-seven Thousand Seventy-one Dollars ($47,071.00);

(h) For counties having a total assessed valuation of Two Billion Dollars ($2,000,000,000.00) or more, a salary of Forty-eight Thousand One Hundred One Dollars ($48,101.00).

(2) The annual salary established for the members of the board of supervisors shall not be reduced as a result of a reduction in total assessed valuation.

(3) The salary of the members of the board of supervisors shall not be increased under this section until the board of supervisors shall have passed a resolution stating the amount of the increase and spread it on its minutes.

HISTORY: Codes, 1942, §§ 4166-01, 4166-02; Laws, 1970, ch. 318, §§ 1, 2; Laws, 1972, ch. 371, § 1; Laws, 1974, ch. 543, § 1; Laws, 1977, ch. 457; Laws, 1980, ch. 477; Laws, 1985, ch. 402; Laws, 1988 Ex Sess, ch. 31, § 1; Laws, 1993, ch. 550, § 6; Laws, 1997, ch. 570, § 4; Laws, 2004, ch. 505, § 2; Laws, 2006, ch. 435, Laws, 2006, ch. 435, § 1, eff June 28, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2019, ch. 485, § 4, eff from and after January 1, 2020.

Editor's Notes — Laws of 2019, ch. 485, § 14, provides as follows:

"SECTION 14. This act will take effect and be in force from and after January 1, 2020, except for Section 11, which shall take effect and be in force from and after July 1, 2019, and Sections 12 and 13, which shall take effect and be in force from and after the passage of this act [approved April 18, 2019]."

Amendment Notes — The 2019 amendment, effective January 1, 2020, in (1), made the following substitutions: "Twenty-nine Thousand Eight Hundred Seventy Dollars ($29,870.00)" for "Twenty-nine Thousand Dollars ($29,000.00)" in (a), "Thirty-three Thousand Two Hundred Sixty-nine Dollars ($33,269.00)" for "Thirty-two Thousand

Three Hundred Dollars ($32,300.00)" in (b), "Thirty-four Thousand Seven Hundred Eleven Dollars ($34,711.00)" for "Thirty-three Thousand Seven Hundred Dollars ($33,700.00)" in (c), "Thirty-five Thousand Seven Hundred Forty-one Dollars ($35,741.00)" for "Thirty-four Thousand Seven Hundred Dollars ($34,700.00)" in (d), "Forty-one Thousand Six Hundred Twelve Dollars ($41,612.00)" for "Forty Thousand Four Hundred Dollars ($40,400.00)" in (e), "Forty-six Thousand Forty-one Dollars ($46,041.00)" for "Forty-four Thousand Seven Hundred Dollars ($44,700.00)" in (f), "Forty-seven Thousand Seventy-one Dollars ($47,071.00)" for "Forty-five Thousand Seven Hundred Dollars ($45,700.00)" in (g), and "Forty-eight Thousand One Hundred One Dollars ($48,101.00)" for "Forty-six Thousand Seven Hundred Dollars ($46,700.00)" in (h).

OPINIONS OF THE ATTORNEY GENERAL

If county supervisors are entitled to increase in salary as result of increase in assessed valuation of oil and gas in county which has been reported by tax commission, supervisors may pass a resolution increasing their salaries and may collect amount of increase in salary beginning in January of calendar year following that in which total assessed valuation is determined. Ruffin, Oct. 12, 1992, A.G. Op. #92-0781.

"Total assessed valuation" refers to total assessed value of county as shown on land rolls, personal property rolls, including assessment of automobiles, and assessed value of all properties in county which are assessed by state tax commission and certified to counties in addition to foregoing; "ad valorem assessment" refers to assessment of property which would be subject to taxation. Davis, Oct. 21, 1992, A.G. Op. #92-0761.

Due to the language in this section which establishes supervisor salaries at "fixed" amounts, the Legislature must clarify the language in the section in order for salaries to be increased in phases over a period of years. Chaney, June 11, 2004, A.G. Op. 04-0237.

Once the board of supervisors passes a resolution putting salaries established under Section 25-3-13 into effect, said salaries are thereafter "fixed" pursuant to statute. Roberts, Nov. 23, 2005, A.G. Op. 05-0555.

§ 25-3-17. Payment of supervisors' salaries.

The salaries provided in Sections 25-3-13 and 25-3-15 shall be payable monthly on the first day of each calendar month during the calendar year following that in which the total assessed valuation is determined; however, the board of supervisors, by resolution duly adopted and entered on its minutes, may provide that such salaries shall be paid semimonthly on the first and fifteenth day of each month or every two (2) weeks pursuant to Section 25-3-29. If a pay date falls on a weekend or legal holiday, salary payments shall be made on the workday immediately preceding the weekend or legal holiday. The chancery clerk shall draw his warrant on the general fund of the county, the county road and bridge fund, or any fund of the county available for such purposes.

HISTORY: Codes, 1942, § 4166-04; Laws, 1970, ch. 318, § 4; Laws, 1997, ch. 572, § 2, eff from and after passage (approved April 23, 1997); Laws, 2020, ch. 435, § 2, eff from and after passage (approved July 2, 2020).

Amendment Notes — The 2020 amendment, effective July 2, 2020, added "or every two (2) weeks pursuant to Section 25-3-29" at the end of the first sentence.

§ 25-3-19. Salaries of county auditors.

The chancery clerks, as county auditors, shall receive compensation for their services as such the annual amount of Five Thousand Three Hundred Dollars ($5,300.00), payable in equal monthly installments out of the county treasury; however, the board of supervisors, by resolution duly adopted and entered on its minutes, may provide that such salaries shall be paid semimonthly on the first and fifteenth day of each month or every two (2) weeks pursuant to Section 25-3-29. If a pay date falls on a weekend or legal holiday, salary payments shall be made on the workday immediately preceding the weekend or legal holiday.

HISTORY: Codes, 1930, § 6505; 1942, § 4167; Laws, 1928, ch. 87; Laws, 1932, ch. 193; Laws, 1938, Ex ch. 25; Laws, 1940, ch. 255; Laws, 1948, ch. 267; Laws, 1950, ch. 258; Laws, 1952, ch. 218; Laws, 1958, ch. 343; Laws, 1966, ch. 300, §§ 1, 2; Laws, 1981, ch. 497, § 2; Laws, 1996, ch. 535, § 1; Laws, 1997, ch. 572, § 3, eff from and after passage (approved April 23, 1997); Laws, 2020, ch. 435, § 3, eff from and after passage (approved July 2, 2020).

Amendment Notes — The 2020 amendment, effective July 2, 2020, added "or every two (2) weeks pursuant to Section 25-3-29" at the end of the first sentence.

§ 25-3-25. Salaries of sheriffs.

OPINIONS OF THE ATTORNEY GENERAL

General salary is full compensation allowable to sheriff; he may not be allowed clothing allowance permitted plainclothes investigators under local and private law. Younger, Oct. 28, 1992, A.G. Op. #92-0825.

Pay raises for county prosecuting attorneys, sheriffs and justice court justices may be made retroactively effective to April 1, 1997, once Laws, 1997, Chapter 570 becomes effectuated under Section 5 of the Voting Rights Act. Dulaney, July 25, 1997, A.G. Op. #97-0403.

Salaries of sheriffs must be based on official census figures. Bryan, Aug. 8, 2005, A.G. Op. 05-0391.

§ 25-3-29. Method of paying salaries.

Except as otherwise therein provided, the salaries mentioned in the foregoing sections shall be paid monthly out of the general county fund, and the salaries and allowances shall be included in the budget of each county; however, the board of supervisors, by resolution duly adopted and entered on its minutes, may provide that such salaries shall be paid semimonthly on the first and fifteenth day of each month or every two (2) weeks. If a pay date falls on a weekend or legal holiday, salary payments shall be made on the workday immediately preceding the weekend or legal holiday.

HISTORY: Codes, 1930, § 6510; 1942, § 4174; Laws, 1924, ch. 208; Laws, 1926, ch. 296; Laws, 1997, ch. 572, § 1, eff from and after passage (approved April 23, 1997); Laws, 2020, ch. 435, § 4, eff from and after passage (approved July 2, 2020).

Amendment Notes — The 2020 amendment, effective July 2, 2020, added "or every two (2) weeks" at the end of the first sentence; and made a minor stylistic change.

§ 25-3-34. Education benchmarks for appointive state and district officials.

OPINIONS OF THE ATTORNEY GENERAL

The State Personnel Board may not approve an educational benchmark award for a subordinate employee that will result in the employee receiving a total salary in excess of the agency head's salary as set in former Section 25-3-33, but not in excess of the salary paid to the agency head as a result of the additional benchmark award provided in Section 25-3-34. Stringer, Jr., Sept. 7, 2001, A.G. Op. #01-0552.

The positions listed in repealed Section 25-3-33, for which the salaries are now set by the State Personnel Board, continue to be covered by the regulations and restrictions on educational benchmarks contained in this section. Stringer, June 20, 2003, A.G. Op. 03-0293.

§ 25-3-35. Salaries of elected judiciary, district attorneys and legal assistants.

(1) The annual salaries of the following judges are fixed as follows:

From and after January 1, 2013, through December 31, 2013:

Chief Justice of the Supreme Court	$ 126,292.50
Presiding Justices of the Supreme Court, each	123,600.75
Associate Justices of the Supreme Court, each	122,460.00

From and after January 1, 2014, through December 31, 2014:

Chief Justice of the Supreme Court	$137,195.00
Presiding Justices of the Supreme Court, each	134,011.50
Associate Justices of the Supreme Court, each	132,390.00

From and after January 1, 2015, through December 31, 2015:

Chief Justice of the Supreme Court	$148,097.50
Presiding Justices of the Supreme Court, each	144,422.25
Associate Justices of the Supreme Court, each	142,320.00

From and after January 1, 2016:

Chief Justice of the Supreme Court	$159,000.00
Presiding Justices of the Supreme Court, each	154,833.00
Associate Justices of the Supreme Court, each	152,250.00

There are imposed upon the Supreme Court justices the extra duties of taking all necessary action to promote judicial education in schools, intervention courts, electronic filing and case management systems as developed by the Administrative Office of Courts, or such other additional duties as may be assigned by the Chief Justice of the Supreme Court. For such extra services each justice, from and after January 1, 2013, shall receive a sum sufficient to aggregate, per annum, the salaries set forth in this subsection (1).

The fixed salaries in this subsection (1) shall be paid from the State

General Fund and from the Judicial System Operation Fund created under Section 9-21-45. No less than: One Hundred Fifteen Thousand Three Hundred Ninety Dollars ($115,390.00) of the Chief Justice's salary in this subsection (1), One Hundred Thirteen Thousand One Hundred Ninety Dollars ($113,190.00) of the salary of a presiding justice in this subsection (1), and One Hundred Twelve Thousand Five Hundred Thirty Dollars ($112,530.00) of the salary of an associate justice in this subsection (1) shall be paid from general fund monies; in addition, the Legislature shall appropriate annually from the Judicial System Operation Fund a sum sufficient to increase the salary of the Chief Justice, a presiding justice and an associate justice to the levels set forth in this subsection (1).

The fixed salaries as specified in this subsection (1) shall be the exclusive and total compensation which can be reported to the Public Employees' Retirement System for retirement purposes; however, any judge in office on December 31, 2003, may continue to report his expense allowance as part of his compensation for retirement purposes.

(2) The annual salaries of the judges of the Court of Appeals of Mississippi are fixed as follows:

From and after January 1, 2013, through December 31, 2013:	
Chief Judge of the Court of Appeals	$ 117,992.00
Associate Judges of the Court of Appeals, each	114,994.25
From and after January 1, 2014, through December 31, 2014:	
Chief Judge of the Court of Appeals	$127,854.00
Associate Judges of the Court of Appeals, each	124,938.50
From and after January 1, 2015, through December 31, 2015:	
Chief Judge of the Court of Appeals	$137,716.00
Associate Judges of the Court of Appeals, each	134,882.75
From and after January 1, 2016:	
Chief Judge of the Court of Appeals	$147,578.00
Associate Judges of the Court of Appeals, each	144,827.00

From and after January 1, 2013, each judge shall receive a sum sufficient to aggregate, per annum, the salaries set forth in this subsection (2).

The fixed salaries in this subsection (2) shall be paid from the State General Fund and from the Judicial System Operation Fund created under Section 9-21-45. No less than One Hundred Eight Thousand One Hundred Thirty Dollars ($108,130.00) of the Chief Judge's salary in this subsection (2) shall be paid from General Fund monies; in addition, the Legislature shall appropriate annually from the Judicial System Operation Fund a sum sufficient to increase the Chief Judge's salary to the level set forth in this subsection (2). No less than One Hundred Five Thousand Fifty Dollars ($105,050.00) of the salary of an Associate Judge in this subsection (2) shall be paid from General Fund monies; in addition, the Legislature shall appropriate annually from the Judicial System Operation Fund a sum sufficient to increase the salary of an Associate Judge to the level set forth in this subsection (2).

The fixed salaries as specified in this subsection (2) shall be the exclusive and total compensation which can be reported to the Public Employees' Retirement System for retirement purposes; however, any judge in office on December 31, 2003, may continue to report his expense allowance as part of his compensation for retirement purposes.

(3) The annual salaries of the chancery and circuit court judges are fixed as follows:

From and after January 1, 2013, through December 31, 2013:

Chancery Judges, each	$ 112,127.50
Circuit Judges, each	112,127.50

From and after January 1, 2014, through December 31, 2014:

Chancery Judges, each	$120,085.00
Circuit Judges, each	120,085.00

From and after January 1, 2015, through December 31, 2015:

Chancery Judges, each	$128,042.50
Circuit Judges, each	128,042.50

From and after January 1, 2016:

Chancery Judges, each	$136,000.00
Circuit Judges, each	136,000.00

In addition to their present official duties, the circuit and chancery judges shall take necessary action to promote judicial education in schools, intervention courts, electronic filing and case management systems as developed by the Administrative Office of Courts, or such other additional duties as may be assigned by the Chief Justice of the Supreme Court. For such extra services each judge, from and after January 1, 2013, shall receive a sum sufficient to aggregate, per annum, the salaries set forth in this subsection (3).

The fixed salaries in this subsection (3) shall be paid from the State General Fund and from the Judicial System Operation Fund created under Section 9-21-45. No less than One Hundred Four Thousand One Hundred Seventy Dollars ($104,170.00) of the salary of a Chancery or Circuit Judge in this subsection (3) shall be paid from General Fund monies; in addition, the Legislature shall appropriate annually from the Judicial System Operation Fund a sum sufficient to increase the salary of a Chancery or Circuit Judge to the levels set forth in this subsection (3).

(4) From and after January 1, 2019, and every four (4) years thereafter, the annual salaries of the judges in subsections (1), (2) and (3) shall be fixed at the level of compensation recommended by the State Personnel Board according to the board's most recent report on judicial salaries, as required under Section 25-9-115, to the extent that sufficient funds are available. The annual salaries fixed in accordance with this subsection (4) shall not become effective until the commencement of the next immediately succeeding term of office.

(5) The Supreme Court shall prepare a payroll for chancery judges and circuit judges and submit such payroll to the Department of Finance and Administration.

(6) The annual salary of the full-time district attorneys shall be:

From and after January 1, 2013, through December 31, 2013:
One Hundred Three Thousand Three Hundred Twenty-two Dollars ($103,322.00).

From and after January 1, 2014, through December 31, 2014:
One Hundred Ten Thousand Eight Hundred Forty-eight Dollars ($110,848.00).

From and after January 1, 2015, through December 31, 2015:
One Hundred Eighteen Thousand Three Hundred Seventy-four Dollars ($118,374.00).

From and after January 1, 2016:
One Hundred Twenty-five Thousand Nine Hundred Dollars ($125,900.00).

(7) The annual salary of the full-time legal assistants shall be not less than Fifteen Thousand Dollars ($15,000.00) nor more than eighty percent (80%) of the salary of the district attorney for legal assistants who have been licensed to practice law for five (5) years or less; eighty-five percent (85%) of the salary of the district attorney for legal assistants who have been licensed to practice law for at least five (5) years but less than fifteen (15) years; and ninety percent (90%) of the salary of the district attorney for legal assistants who have been licensed to practice law for at least fifteen (15) years or more.

HISTORY: Codes, 1942, § 4175.5; Laws, 1966, ch. 445, § 2; Laws, 1970, ch. 402, § 3; Laws, 1974, ch. 351; Laws, 1978, ch. 520, § 4; Laws, 1983, ch. 536, § 3; Laws, 1988, ch. 528, § 4; Laws, 1991, ch. 373, § 3; Laws, 1993, ch. 481, § 5; Laws, 1993, ch. 518, § 32; Laws, 1997, ch. 577, § 3; Laws, 1999, ch. 581, § 3; Laws, 2003, ch. 563, § 2; Laws, 2006, ch. 548, § 2; Laws, 2008, ch. 548, § 1; Laws, 2012, ch. 329, § 1, eff January 1, 2013 (the later of the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section, or January 1, 2013); Laws, 2019, ch. 466, § 24, eff from and after July 1, 2019.

Editor's Notes — Laws of 2019, ch. 466, § 1 provides as follows:
"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment substituted "intervention courts" for "drug courts" in the second paragraphs of (1) and (3).

§ 25-3-36. Compensation of justice court judges; disposition of fees, costs, fines and cash bonds; justice court clerk clearing account.

(1) Until October 1, 2008, every justice court judge shall receive as full compensation for his or her services, and in lieu of any and all other fees, costs or compensation heretofore authorized for such justice court judge, an annual salary based upon the population of his or her county according to the latest federal decennial census; however, no justice court judge shall be paid less than the salary authorized under this section to be paid the justice court judge based upon the population of the county according to the 1980 federal decennial census. The amount of which salary shall be determined as follows:

(a) In counties with a population of more than two hundred thousand (200,000), a salary of Fifty-five Thousand Five Hundred Fifty-nine Dollars ($55,559.00).

(b) In counties with a population of more than one hundred fifty thousand (150,000) but not more than two hundred thousand (200,000), a salary of Fifty-one Thousand Five Dollars ($51,005.00).

(c) In counties with a population of more than seventy-five thousand (75,000) but not more than one hundred fifty thousand (150,000), a salary of Forty-six Thousand Four Hundred Fifty-one Dollars ($46,451.00).

(d) In counties with a population of more than forty-nine thousand (49,000) but not more than seventy-five thousand (75,000), a salary of Forty Thousand Seventy-five Dollars ($40,075.00).

(e) In counties with a population of more than thirty-four thousand (34,000) but not more than forty-nine thousand (49,000), a salary of Thirty-four Thousand Six Hundred Ten Dollars ($34,610.00).

(f) In counties with a population of more than twenty-four thousand five hundred (24,500) but not more than thirty-four thousand (34,000), a salary of Thirty-two Thousand Seven Hundred Eighty-nine Dollars ($32,789.00).

(g) In counties with a population of more than twenty-one thousand (21,000) but not more than twenty-four thousand five hundred (24,500), a salary of Twenty-nine Thousand One Hundred Forty-six Dollars ($29,146.00).

(h) In counties with a population of more than sixteen thousand five hundred (16,500) but not more than twenty-one thousand (21,000), a salary of Twenty-five Thousand Five Hundred Two Dollars ($25,502.00).

(i) In counties with a population of more than twelve thousand (12,000) but not more than sixteen thousand five hundred (16,500), a salary of Twenty-one Thousand Eight Hundred Fifty-nine Dollars ($21,859.00).

(j) In counties with a population of more than eight thousand (8,000) but not more than twelve thousand (12,000), a salary of Eighteen Thousand Dollars ($18,000.00).

(k) In counties with a population of eight thousand (8,000) or less, a salary of Fourteen Thousand Four Hundred Dollars ($14,400.00).

The board of supervisors of any county having two (2) judicial districts and two (2) justice court judges for the county shall pay each justice court judge an amount equal to that provided in this subsection for judges in the next higher population category per year, if the justice court judge maintains regular office hours and is personally present in the office they maintain for at least thirty (30) hours per week.

In any county having a population greater than eight thousand (8,000) but less than eight thousand five hundred (8,500) according to the 1990 federal decennial census and in which U.S. Highway 61 and Mississippi Highway 4 intersect, the board of supervisors, in its discretion, may pay such justice court judges an additional amount not to exceed the sum of Eleven Thousand Five Hundred Fifty Dollars ($11,550.00) per year, payable beginning April 1, 1997.

In any county having a population greater than ten thousand (10,000) but less than ten thousand five hundred (10,500) according to the 1990 federal decennial census and in which Mississippi Highway 3 and Mississippi Highway 6 intersect, the board of supervisors, in its discretion, may pay such justice court judges an additional amount not to exceed One Thousand Four Hundred Fifty Dollars ($1,450.00) per year, payable beginning April 1, 1997.

In any county having a population greater than twenty-four thousand seven hundred (24,700) and less than twenty-four thousand nine hundred (24,900), according to the 1990 federal census, wherein Mississippi Highways 15 and 16 intersect, the board of supervisors shall pay such justice court judge an additional amount equal to Two Thousand Five Hundred Dollars ($2,500.00) per year.

(2) From and after October 1, 2008, every justice court judge shall receive as full compensation for his or her services, and in lieu of any and all other fees, costs or compensation heretofore authorized for such justice court judge, an annual salary in an amount that is the greater of the following:

(a) The amount paid to a member of the board of supervisors in the same county in which the justice court judge presides; or

(b) One hundred three percent (103%) of the salary authorized under this section as of September 30, 2008, for a justice court judge in that county.

If supervisors of a county receive a salary increase, justice court judges whose salary is determined under this paragraph shall be paid an amount reflecting a commensurate increase.

(3) Notwithstanding the provisions of subsection (1) of this section, in the event that the number of justice court judges authorized pursuant to Section 9-11-2(1) is exceeded pursuant to the provisions of Section 9-11-2(4), the aggregate of the salaries paid to the justice court judges of such a county shall not exceed the amount sufficient to pay the number of justice court judges authorized pursuant to Section 9-11-2(1), and such amount shall be equally divided among those justice court judges continuing to hold office under the provisions of Section 9-11-2(4).

(4) From and after January 1, 1984, all fees, costs, fines and penalties charged and collected in the justice court shall be paid to the clerk of the justice court for deposit, along with monies from cash bonds and other monies which have been forfeited in criminal cases, into the general fund of the county as provided in Section 9-11-19; and the clerk of the board of supervisors shall be authorized and empowered, upon approval by the board of supervisors, to make disbursements and withdrawals from the general fund of the county in order to pay any reasonable and necessary expenses incurred in complying with this section, including payment of the salaries of justice court judges as provided by subsection (1) of this section. The provisions of this subsection shall not, except as to cash bonds and other monies which have been forfeited in criminal cases, apply to monies required to be deposited in the justice court clerk clearing account as provided in Section 9-11-18, Mississippi Code of 1972.

(5) The salaries provided for in this section shall be payable monthly by warrant drawn by the clerk of the board of supervisors on the general fund of

the county; however, the board of supervisors, by resolution duly adopted and entered on its minutes, may provide that such salaries shall be paid semimonthly on the first and fifteenth day of each month or every two (2) weeks pursuant to Section 25-3-29. If a pay date falls on a weekend or legal holiday, salary payments shall be made on the workday immediately preceding the weekend or legal holiday.

(6) Provided, that the salary of any justice court judge shall not be reduced during his term of office as a result of a population change following a federal decennial census.

(7) Any justice court judge who is unable to attend and hold court by reason of being under suspension by the Commission on Judicial Performance or the Mississippi Supreme Court shall not receive a salary while under such suspension.

HISTORY: Laws, 1981, ch. 471, §§ 5, 6; Laws, 1982, ch. 423, § 4; Laws, 1983, 2nd Ex Sess. ch. 7, § 2; Laws, 1984, ch. 502, § 5; Laws, 1985, ch. 365; Laws, 1988, ch. 502, § 1; Laws, 1991, ch. 594, § 2; Laws, 1992, ch. 476, § 1; Laws, 1993, ch. 550, § 7; Laws, 1997, ch. 570, § 6; Laws, 1998, ch. 459, § 1; Laws, 2004, ch. 505, § 4; Laws, 2008, ch. 319, § 7, eff July 24, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2020, ch. 435, § 5, eff from and after passage (approved July 2, 2020).

Amendment Notes — The 2020 amendment, effective July 2, 2020, in (5), added "or every two (2) weeks pursuant to Section 25-3-29" at the end of the first sentence.

OPINIONS OF THE ATTORNEY GENERAL

Statutory language is self-executing and therefore, at such time as federal authority officially publishes decennial census, board of supervisors shall authorize clerk to make all necessary salary adjustments, if any, for payment of justice court judges next monthly salary. Blakney, April 26, 1990, A.G. Op. #90-0281.

Under statute as amended by House Bill No. 1074, 1993 Miss. Laws, Chapter 550, no justice court judge is to receive less compensation than that received prior to the 1990 census; therefore, even though 1990 population of county dropped below 49,000, justice court judges in that county will continue to receive an annual compensation of $26,400.00 instead of $25,080.00 as provided for by House Bill No. 1074 for counties where population ranges from 34,000 to 49,000. Sherard, June 16, 1993, A.G. Op. #93-0417.

Section 25-3-36 sets forth the compensation to be paid to justice court judges. This compensation is based on the population of the county according to the 1990 federal decennial census. There is no provision that gives the Board of Supervisors any authority to increase the salaries of the justice court judges due to an increased caseload. Adkins, July 12, 1996, A.G. Op. #96-0457.

Pay raises for county prosecuting attorneys, sheriffs and justice court justices may be made retroactively effective to April 1, 1997, once Laws, 1997, Chapter 570 becomes effectuated under Section 5 of the Voting Rights Act. Dulaney, July 25, 1997, A.G. Op. #97-0403.

A county which has two justice court clerks and maintains two dockets and two separate buildings for justice court does not have two judicial districts; therefore, the justice court judges in that county are not entitled to the next higher level of payment as set forth in Miss. Code Section 25-3-36. Buchanan, Aug. 1, 1997, A.G. Op. #97-0479.

In a situation where a decrease in population has led to a reclassification of the county for justice court judge salaries, the justice court judges may be paid the amount that such judges were making prior to the promulgation of the census under the law as it existed at that time, or may be paid the salary designated under the latest version of Section 25-3-36 for the classification they presently fit, whichever is greater. Lee, Nov. 14, 1997, A.G. Op. #97-0707.

A justice court judge is an ex officio notary public, but may not receive additional fees for such services. Hatfield, August 10, 1998, A.G. Op. #98-0460.

A justice court judge's salary is determined by using the population of the county from either the 1980 or 1990 census, whichever is higher; accordingly, a county board of supervisors was required to increase the salaries of Justice Court Judges effective October 1, 1998. Lee, December 18, 1998, A.G. Op. #98-0740.

There are no provisions for a board of supervisors to increase the salary of a justice court judge due to increased caseload or increased population according to the 2000 federal decennial census. Gordon, June 7, 2002, A.G. Op. #02-0331.

§ 25-3-37. Salaries to be full compensation.

OPINIONS OF THE ATTORNEY GENERAL

Although the Commissioner of Public Safety is not entitled to supplemental compensation for any employment duties connected with his position, the duties of Commissioner of Public Safety do not include being a member of the Mississippi Ethics Commission, therefore any per diem the Commissioner would be entitled to as a member of the Ethics Commission can be accepted. Dixon, Jan. 9, 1992, A.G. Op. #92-0006.

Limitation provided in section 25-3-37 applies to compensation paid to State Treasurer for performing all public duties and responsibilities relating to office of State Treasurer and limitation was not intended to apply to compensation paid to public officers for performing duties and responsibilities of separate office not enumerated in sections 25-3-31 through 25-3-35, such as trustee of Public Employees' Retirement System. Walker, March 23, 1994, A.G. Op. #93-0749.

While Sections 25-3-37 and 25-3-38 are no longer directly applicable to the state forester, those statutes set forth a sound public policy that must be adhered to, that is that Mississippi public officials whose salaries were previously set by former Section 25-3-33 should not be receiving supplemental compensation from private or federal funds regardless of the manner in which their salaries are set. Harvey, Nov. 18, 2005, A.G. Op. 05-0444.

§ 25-3-39. Ceiling established for salaries; sources of funding for salaries; exemptions for Executive Director of Mississippi Development Authority, Governor's Chief of Staff and certain professional public employees.

OPINIONS OF THE ATTORNEY GENERAL

Section 25-3-39(1) does not apply to county employees. Under its terms, the section applies only to public officers, employees, administrators or executive heads of arms or agencies of the state designated in Sections 25-3-31 through former 25-3-33. Ross, April 20, 1995, A.G. Op. #95-0207.

The State Personnel Board may not approve an educational benchmark award for a subordinate employee that will result in the employee receiving a total salary in excess of the agency head's salary as set in Section 25-3-33 [Repealed], but not in excess of the salary paid to the agency head as a result of the additional benchmark award provided in Section 25-3-34. Stringer, Jr., Sept. 7, 2001, A.G. Op. #01-0552.

The ceiling imposed by § 25-3-39(2) applies to employees' full or "aggregate" compensation. Strange, Sept. 13, 2002, A.G. Op. #02-0372.

For purposes of applying the ceiling imposed by § 25-3-39(2) in the case of agents of the Mississippi Bureau of Narcotics, the executive head of the Bureau of Narcotics is the Director of the Bureau. Strange, Sept. 13, 2002, A.G. Op. #02-0372.

The salary ceiling of § 25-3-39(2) applies to the calculation of retirement benefits. Strange, Sept. 13, 2002, A.G. Op. #02-0372.

A highway patrol officer assigned to duty with the Mississippi Bureau of Narcotics retains his or her status as a highway patrol officer for all purposes; therefore, because the executive head of the agency in which the officer is employed is the Commissioner of Public Safety, the cap imposed by § 25-3-39(2) would, for these officers, apply to the Commissioner's salary. Strange, Sept. 13, 2002, A.G. Op. #02-0372.

Section 25-3-39(1) has never been interpreted to apply to officers, employees or heads of units of local government, and thus does not limit the salary of the executive director of a regional housing authority. Delcambre, May 16, 2003, A.G. Op. 03-0217.

§ 25-3-40. Annual salary increases; intent to implement minimum wage and maximize salary increases.

OPINIONS OF THE ATTORNEY GENERAL

The Board of Nursing sets the salary of its executive director within a salary range established by the State Personnel Board in accordance with the variable compensation plan. The Board may vote at any time to adjust the salary within the range established and amended by the Personnel Board. The Board does not have to vote to change the salary each time the range changes. Mabry, Nov. 10, 2006, A.G. Op. 06-0544.

§ 25-3-41. Traveling expenses of state officers and employees; travel services by commercial travel agency.

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory authority empowering regional library system to reimburse professional job applicants for travel expenses incurred in connection with interviewing for job vacancies within system. Williams, Jan. 24, 1990, A.G. Op. #90-0036.

Expenses incurred by council members (1) attending luncheons, dinners or banquets, or (2) traveling to and from council meetings, cannot legally be interpreted as incurred "in performance of official duties." Compton, August 7, 1990, A.G. Op. #90-0488.

Sheriff could authorize out of county travel for deputy out of sheriff's travel budget for necessary travel made in county patrol car without necessity of seeking additional approval of board of supervisors; if officer travels in his personal vehicle, sheriff could authorize officer to expend public funds on his meal, lodging, and other necessary expenses, except mileage as this expense would have to be approved by board of supervisors. Walters, August 22, 1990, A.G. Op. #90-0614.

Travel within city by council members, either to or from council meetings, is not reimbursable under statute. Halat, Oct. 26, 1990, A.G. Op. #90-0102.

Since Miss. Code Section 25-3-41 allows travel expenses to be reimbursed only "when any officer or employee of the state or county" is required to travel in scope of employment, if person in question is official county engineer, receiving salary under Miss. Code Section 65-17-205, then county may pay reasonable expenses for engineer to attend various professional meetings which board determines and approves in advance as being necessary and related to engineer's county responsibilities; however, if engineer in question is independent contractor, who is being paid by county on contract basis, then such engineer may not receive any expenses unless provided for by contract. Austin, Mar. 10, 1993, A.G. Op. #93-0102.

Department of Finance and Administration, without further legislative redress, lacks authority to categorically deny reimbursement of all taxable meals. Ranck Aug. 27, 1993, A.G. Op. #93-0570.

Payment of cost of luncheon or dinner for city officers or employees in connection with seminar held by city for city officers and employees would constitute violation of law Shepard Oct. 6, 1993, A.G. Op. #93-0628.

When travel by public carrier is to location where private or state owned vehicle is not available, and transportation by motor vehicle is necessary such that rental vehicle is required, and such having previously been authorized, Section 25-3-41 authorizes such officer or employee to be reimbursed actual, reasonable and necessary expense incurred for such rental vehicle. Ranck Nov. 3, 1993, A.G. Op. #93-0819.

Under Section 25-3-41(2), travel must be duly authorized by the county board of supervisors before reimbursement can be received. Ross, April 12, 1995, A.G. Op. #95-0201.

A court reporter may not claim and be paid mileage expenses under Section 25-3-41 for travel from the court reporter's home to his primary place of employment or "main office." Hollimon, April 27, 1995, A.G. Op. #95-0179.

Under Section 25-3-41(4), a municipal governing authorities may in their discretion reimburse employees and officers for meals when the meal expenses are incurred in the course of travel which is not overnight and which is required in the performance of official duties. The governing authorities may define "travel" and specify which meal expenses will be reimbursed when officers and employees must travel beyond the geographic locations where they routinely work. Triggs, May 3, 1995, A.G. Op. #95-0260.

Section 25-3-41 does not allow local governing authorities to pass broadly worded reimbursement "authorizations" and that such a practice would negate the need for a case-by-case determination as to whether the reimbursement is proper. Compton, June 23, 1995, A.G. Op. #95-0346.

Whether a travel expense is incurred "in the performance of his official duties" is a factual determination to be made by the City Council on a case-by-case basis prior to the expense being authorized and incurred. Section 25-3-41 does not permit a blanket authorization. Compton, June 23, 1995, A.G. Op. #95-0346.

If a constable were given a lawful order by the court to transport a prisoner from the jail to the court, he may be entitled to mileage reimbursement as set forth in Section 25-3-41. Chapman, June 7, 1996, A.G. Op. #96-0369.

That travel expenses that are anticipated by the sheriff of a county and are specifically included in the annual budget which is approved by the board of supervisors are duly authorized as required by Section 25-3-41. Smith, August 23, 1996, A.G. Op. #96-0562.

An officer or employee of a municipality may be paid in advance for authorized travel expenses, but travel to and from council meetings, and expenses incurred attending luncheons, dinners or banquets are not legally reimbursable. Criss, July 11, 1997, A.G. Op. #97-0357.

A non-profit Mississippi corporation organized and existing for the purpose of providing public ambulance service is not subject to the provisions of the statute. Oliver, April 10, 1998, A.G. Op. #98-0183.

If a supervisor does not have a county vehicle available for use when travel is necessary, he may draw mileage pursuant to the statute, and there is no requirement that all county supervisors turn in their county owned vehicles in order for one supervisor to draw mileage. Austin, July 17, 1998, A.G. Op. #98-0332.

The county board of supervisors is the proper fact finder in determining whether a proposed travel expense will be incurred in the performance of official duties; thus, if the board determines, in advance and on a case by case basis, that travel is necessary for the proper conduct of county business and should be reimbursed, then such a finding can be made and reimbursement had although, generally speaking, traveling to and from boards of supervisors' meetings cannot be legally interpreted as incurred in the performance of official duties. Austin, July 17, 1998, A.G. Op. #98-0332.

There is no authority for a municipality to reimburse aldermen for expenses for travel or dues for professional associations when these expenses and dues were not authorized prior to travel. Davis, July 31, 1998, A.G. Op. #98-0425.

The governing authorities could pay the travel expenses of officers who attended the convention where (1) the board, by a majority vote, approved travel to the convention by officers on the minutes on April 7, 1998, and (2) the board voted again on May 12, 1998 on an order to authorize travel expenses for officers who desired to attend the Convention and that order did not pass; payment was still permitted since the latter vote did not rescind or cancel the earlier vote. Gerhart, July 31, 1998, A.G. Op. #98-0454.

If an inmate sues the county board of supervisors and the sheriff and the trial occurs two years later out of county where overnight stay becomes a necessity, the county may reimburse the sheriff and supervisors for out of pocket expenses for the hotel, meals, and mileage, even if some of these elected officials are no longer holding public office at the time of the trial. Mullins, November 13, 1998, A.G. Op. #98-0679.

Where the governing authorities paid an alderman who owned a car for mileage expenses for travel to conference in advance of the travel, they did not have authority to also pay a second alderman who rode in the same car for mileage. Jenkins, February 19, 1999, A.G. Op. #99-0081.

This section does not apply to public transportation of Medicaid recipients who participate in the Division of Medicaid's Non-Emergency Transportation program. Wetherbee, March 16, 1999, A.G. Op. #99-0106.

A county does not have authority to obtain credit cards for use by the board of supervisors and board attorney for use associated with county business. Austin, April 23, 1999, A.G. Op. #99-0182.

Members of the Mississippi State Board of Medical Licensure may receive travel expenses, meals, lodging, and other necessary expenses when they, after first being duly authorized, are required to travel in the performance of their official duties, and such official duties may include attending ad hoc committee meetings at times other than regular board meetings. Burnett, Dec. 3, 1999, A.G. Op. #99-0646.

The Department of Marine Resources may arrange lodging on a week-to-week basis for the duration of a legislative session in order to carry out the official duties of the department, as long as state regulations are followed in the exercise of this power. Woods, Jan. 21, 2000, A.G. Op. #99-0716.

There is no authority for governing boards of public universities, community colleges, and school districts to obtain credit cards to be issued in the names of the respective institutions to officers or employees for use in the course and scope of employment. Murray, Nov. 17, 2000, A.G. Op. #2000-0654.

A mayor does not have the authority to receive expenses for travel without prior board approval either specifically in the minutes or by official board policy adopted in the minutes. Willis, Mar. 8, 2002, A.G. Op. #02-0055.

A mayor and the aldermen may receive travel advances upon prior approval in the minutes by the board of aldermen in accordance with the guidelines adopted by the Department of Audit; however, there is no authority for advance payment of per diem. Willis, Mar. 8, 2002, A.G. Op. #02-0055.

An officer or employee of the state must obtain prior authorization for travel in order to be reimbursed for expenses incurred in travel. Ross, Sept. 6, 2002, A.G. Op. #02-0523.

Governing authorities of a municipality may, in their discretion, adopt a policy regarding reimbursement for meal expenses incident to travel which would establish a maximum daily allowance for those meals, and would not require the submission of receipts. Hammack, Mar. 14, 2003, A.G. Op. #03-0106.

Sections 19-4-1 and 19-4-7 permit the board of supervisors to delegate to the county administrator their duty to approve travel by county employees under Section 25-3-41; however, giving advance approval to certain classes of employees, rather than individual employees, to attend unspecified training classes during a particular month or similar time period, does not satisfy the requirements of Section 25-3-41. Nowak, Jan. 6, 2005, A.G. Op. 05-0625.

A county board of supervisors may, by appropriate action, increase the mileage rate for its officers and employees, and employees, or for any agency, board or commission of the county, not to exceed that allowed for state officers and employees, without increasing the mileage rate for jurors. McWilliams, Jan. 20, 2006, A.G. Op. 05-0642.

Even if travel is for official purposes, unless approved prior to the trip, a municipality is not authorized to pay for or reimburse an officer or employee for expenses related to that travel, and the approval of a claim for official travel which was not previously authorized either specifically in the minutes or by official policy of the municipality would be unlawful. Crisler, Mar. 24, 2006, A.G. Op. 06-0073.

A governing authority may define which expenses are reimbursable travel expenses, consistent with the rules and regulations of the Department of Finance and Administration. Reimbursement of travel expenses may only be made for travel authorized by a governing authority in minutes or by resolution or ordnance, and must be included in the annual budget. A governing authority can authorize a department head to approve travel it has budgeted. Only the administrative head of a municipal department may authorize travel advances. Campbell, March 23, 2007, A.G. Op. #07-00135, 2007 Miss. AG LEXIS 120.

§ 25-3-63. Local governmental entities and local school districts authorized to grant administrative leave with pay to their employees in the event of extreme weather conditions or man-made or natural disasters or emergencies.

From and after March 14, 2020, the board of supervisors of any county, the governing authority of any municipality and the local school board of any public school district may grant administrative leave with pay during the affected period within the affected county, municipality or school district to the employees of such governmental entities on a local or statewide basis in the event of extreme weather conditions or in the event of a man-made, technological or natural disaster or emergency, if such event has resulted in an emergency declaration by the Governor. Any employee on a previously approved leave during the affected period shall be eligible for such administrative leave granted by the governing authority, and shall not be charged for his or her previously approved leave during the affected period.

HISTORY: Laws, 2020, ch. 302, § 1, eff from and after passage (approved March 19, 2020).

Editor's Notes — A former § 25-3-63 [Codes, 1982, § 3958; 1906, § 4482; Hemingway's 1917, § 7275; 1930 § 6520; 1942, § 4185; 1968, ch. 435, § 1; 1970, ch. 403, § 1; Repealed by Laws, 1976, ch. 490, § 6, eff from and after July 1, 1976] pertained to sick leave for salaried state employees. See § 25-3-91 et seq. for comparable provisions.

§ 25-3-67. Deductions from municipal employees' salaries for contributions for United Way, insurance, and United States Savings Bonds.

OPINIONS OF THE ATTORNEY GENERAL

Municipalities have the local discretion to recoup the additional costs which are reasonably associated with providing a payroll deduction service for its employees pursuant to 25-3-67. Thompson, April 18, 1995, A.G. Op. #95-0240.

The statute does not limit the payroll deductions for insurance purposes only to those policies procured for the employee by the employer under the authority of Section 25-15-101. Perkins, Apr. 23, 2001, A.G. Op. #01-0204.

Municipal governing authorities do not have discretion to allow any payroll deductions beyond those listed in Section 25-3-67, which does not include wage assignments. Brown, Nov. 8, 2002, A.G. Op. #02-0649.

Payroll deductions for Sam's Club memberships for municipal employees are not authorized. Kohnke, Jan. 14, 2005, A.G. Op. 04-0648.

§ 25-3-69. Uniform per diem compensation for officers and employees of state boards, commissions and agencies.

OPINIONS OF THE ATTORNEY GENERAL

A judge should order, pursuant to Section 25-3-69, each county to pay the bailiff's wages for the day or days that he serves in that county. Barlow, March 10, 1995, A.G. Op. #95-0054.

Hospital trustees are entitled to receive a per diem of forty dollars authorized by Section 25-3-69 for no more than thirty-six meetings for any one calendar year. Thomas, September 27, 1995, A.G. Op. #95-0469.

Based on Sections 25-7-27(e) and 19-19-7, a constable has a duty to attend both the criminal and civil cases in justice court in his district. However, a constable may be compensated with a per diem as provided under Section 25-3-69 when such constable serves as a bailiff in civil cases only. No similar provision exists that would provide compensation to the constable for serving as bailiff in a criminal case. Thompson, September 6, 1996, A.G. Op. #96-0606.

A county board of supervisors may choose to compensate its census committee pursuant to the standard per diem rate authorized by the statute, but as there may be some overlap between the duties and responsibilities of the census committee and that of the election commission, careful records must be maintained by the two committees to avoid duplicative payments. Gore, August 14, 1998, A.G. Op. #98-0473.

A commissioner who is entitled to receive per diem compensation under this section and who arrives at an airport authority commission meeting after the commissioners transact the business on the agenda but before they vote to adjourn the meeting is technically entitled to receive per diem compensation for that day. Yancey, August 13, 1999, A.G. Op. #99-0374.

The statute permits the payment of per diem compensation to members of the Mississippi State Board of Medical Licensure for attending ad hoc committee meetings that are held at a time other than regular board meetings when such attendance is for the discharge of official duties of such members. Burnett, Dec. 3, 1999, A.G. Op. #99-0646.

A full-time firefighter, like all other municipal officers and employees, is prohibited from being a commissioner of the municipal housing authority under Miss. Code Ann. § 43-33-7. The appointment of a spouse of a member of the board of aldermen as a commissioner of the municipal housing authority violates the Nepotism Statute, Miss. Code Ann. § 25-1-53, except that a person serving as commissioner prior to election of their spouse to the board of aldermen may be reappointed. Tucker, March 15, 2007, A.G. Op. #07-00130, 2007 Miss. AG LEXIS 103.

VACATION TIME AND SICK LEAVE

§ 25-3-91. Definitions.

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory authority for a school district to pay for employee benefits accruing to an individual as a result of previous employment with another school district. Walker, May 11, 1995, A.G. Op. #95-0319.

For purposes of determining creditable service and calculating average compensation for retirement benefits, leave accrued at rates in excess of that provided in Section 25-3-91 et seq. and the lump sum payment of personal leave in excess of thirty days would not be included. Artigues, November 8, 1996, A.G. Op. #96-0797.

Although Miss. Code Sections 25-3-91 and 25-3-95, which permit state employees to donate a certain portion of their earned personal leave or major medical leave to another employee under some circumstances, do not apply to municipal employees, municipalities may adopt ordinances or resolutions providing for a similar program in a municipality in the absence of a state statute governing a similar municipal employee leave program. Stark, July 18, 1997, A.G. Op. #97-0361.

Even when a state agency has a policy of granting administrative leave for court services or appearances, the agency may require an employee serving as a witness or juror or party litigant to take personal leave, compensatory leave, or leave without pay (where personal leave and compensatory leave have been exhausted) if the employee's court service or appearance is not verified by the clerk of the court. Taylor, June 7, 1999, A.G. Op. #99-0207.

The E-911 Commission may adopt the county personnel policy regarding the donation of leave to co-workers. Maxwell, Oct. 4, 2002, A.G. Op. #02-0569.

§ 25-3-92. Compensatory leave; administrative leave.

OPINIONS OF THE ATTORNEY GENERAL

The Adjutant General is not entitled to compensatory leave under any provision of state law and need not provide written documentation of his work schedule except to the extent required by the Governor. Pearson, May 13, 1992, A.G. Op. #92-0212.

Employees that work hours in excess of their normal work period are entitled to compensatory time off in accordance with state law, irrespective of the requirements of federal law. Head, June 25, 1992, A.G. Op. #92-0444.

Under Section 25-3-92 the legislature did not intend for any accumulated unused compensatory leave to be counted as creditable service for the purposes of the retirement system. Keating, January 19, 1996, A.G. Op. #96-0017.

Both the Commissioner of Corrections and the Deputy Commissioners come within the meaning of "employee", as used in the statute and are eligible for compensatory leave, when in the opinion of the appointing authority, it is essential that they work after normal hours. Anderson, May 8, 1998, A.G. Op. #98-0229.

§25-3-93. Personal leave.

OPINIONS OF THE ATTORNEY GENERAL

Municipal governing authorities have authority to adopt leave policy and provide for payment to terminated employees for unused personal leave up to maximum of thirty (30) days; if governing authorities have adopted such policy and employee upon termination has accumulated unused personal leave, he would be entitled to compensation within guidelines of adopted policy on same basis as other employees. Coats, March 15, 1990, A.G. Op. #90-0192.

No statute provides maternity leave benefits for state employees; natural childbirth mother may use annual leave for pregnancy and/or childbirth, and state employee may use annual leave while taking care of adopted infant. Ranck, July 2, 1992, A.G. Op. #92-0508.

If former community college president had 14 days of unused accumulated personal leave for which he could be paid under state law at time he left college, he would be entitled to payment for 14 days he took during paid leave of absence to conduct business on behalf of college. Bradley, Sept. 2, 1992, A.G. Op. #92-0637.

When employee is no longer performing any work for agency and has no plan or intention to return to work but is merely exhausting his or her personal leave before formally resigning position, termination of employment has effectively occurred as of date employee last worked; such employee would be entitled to receive payment for not more than thirty days accumulated leave, and all other leave is to be counted as creditable service for retirement purposes. Dyson, Sept. 2, 1992, A.G. Op. #92-0698.

Limitation placed on appointing authority in granting earned and accumulated personal leave to employee is that said appointing authority can grant no more personal leave than that which has been accumulated or earned by employee. Head, Nov. 29, 1993, A.G. Op. #93-0824.

If individual is employee occupying position in state service or non-state service, then individual will be eligible for personal and sick leave benefits. Ranck, Jan. 10, 1994, A.G. Op. #93-0949.

A judge would be entitled to additional creditable service for retirement purposes in accordance with the provisions of sections 25-3-93 and 25-3-95. Truly, March 10, 1995, A.G. Op. #95-0057.

The Governor or the appointing authority of the affected state agencies have the discretion, pursuant to Section 25-3-93(2)(b), to grant administrative leave to state employees previously placed in furlough status if federal funds have been made available to compensate such employees for the furlough period. Maher, November 29, 1995, A.G. Op. #95-0820.

If the assistant district attorney's employment status with the state is being terminated in favor of an elected office, he is entitled to be paid for not more than thirty days of accumulated personal leave, with unused personal leave in excess of thirty days to be counted as creditable service for purposes of retirement, all as provided in Section 25-3-93(4). Ranck, February 8, 1996, A.G. Op. #95-0856.

Pursuant to Section 25-3-93(4) and 25-3-97(5) if the district attorneys have adopted leave policies identical to the state and those policies authorize the transfer of accumulated leave from one district attorney's office to another, similar to a transfer between state agencies, then all such accumulated leave would be transferable. There would be no authority for the former employer to make a lump sum payment under these circumstances. Ranck, April 9, 1996, A.G. Op. #96-0170.

A break in service would not include the lapse of one non-work day, but would include the acceptance of a lump sum payment for personal leave. See Section 25-3-95. Ranck, April 9, 1996, A.G. Op. #96-0170.

An agent of the Bureau of Narcotics, though classified as an enforcement officer after training by the Mississippi Highway Safety Patrol, is not the equivalent of an officer of the Highway Patrol and, except for certain described individuals, is not an officer of the Highway Patrol and, unlike the latter, must use earned major medical leave or personal leave during the period of recovery from injury, wound or accident sustained in the line of duty. Jones, January 9, 1998, A.G. Op. #97-0768.

Bureau of Narcotics agents who have been designated as officers of the Mississippi Highway Safety Patrol do not have to expend earned major medical or personal leave while recuperating from onduty injuries. Jones, March 13, 1998, A.G. Op. #98-0111.

The statute does not apply to employees of a county school district. Ball, Nov. 19, 2000, A.G. Op. #2000-0650.

Where an employee takes compensatory time for the last several weeks of his employment with a county prior to the effective date of his resignation, the employee is not eligible to continue to participate in State Retirement during such period. Yancey, Mar. 23, 2001, A.G. Op. #01-0102.

Section 25-11-103(i) authorizes a political subdivision to tailor a local personnel policy of its own, affording more or less leave benefits than those afforded state employees. However, if a political subdivision, such as a water and sewer district, affords more leave benefits to its employees such leave policies may not enlarge the benefits afforded to such employees in the state retirement system and such leave should not be reported to the PERS. Fonda, Feb. 27, 2004, A.G. Op. 04-0054.

§ 25-3-95. Major medical leave.

OPINIONS OF THE ATTORNEY GENERAL

Municipalities may adopt leave policies which exceed the benefits available to state employees via statute. Ramsay, June 3, 1992, A.G. Op. #92-0361.

No statute provides maternity leave benefits for state employees; natural childbirth mother may use major medical leave for pregnancy and/or childbirth. Ranck, July 2, 1992, A.G. Op. #92-0508.

A judge would be entitled to additional creditable service for retirement purposes in accordance with the provisions of sections 25-3-93 and 25-3-95. Truly, March 10, 1995, A.G. Op. #95-0057.

A break in service would not include the lapse of one non-work day, but would include the acceptance of a lump sum payment for personal leave. See Section 25-3-93 Ranck, April 9, 1996, A.G. Op. #96-0170.

Although Miss. Code Sections 25-3-91 and 25-3-95, which permit state employees to donate a certain portion of their earned personal leave or major medical leave to another employee under some circumstances, do not apply to municipal employees, municipalities may adopt ordinances or resolutions providing for a similar program in a municipality in the absence of a state statute governing a similar municipal employee leave program. Stark, July 18, 1997, A.G. Op. #97-0361.

An agent of the Bureau of Narcotics, though classified as an enforcement officer after training by the Mississippi Highway Safety Patrol, is not the equivalent of an officer of the Highway Patrol and, except for certain described individuals, is not an officer of the Highway Patrol and, unlike the latter, must use earned major medical leave or personal leave during the period of recovery from injury, wound or accident sustained in the line of duty. Jones, January 9, 1998, A.G. Op. #97-0768.

Bureau of Narcotics agents who have been designated as officers of the Mississippi Highway Safety Patrol do not have to expend earned major medical or personal leave while recuperating from onduty injuries. Jones, March 13, 1998, A.G. Op. #98-0111.

Provided a leave policy has been lawfully adopted, and if such policy tracks the language as found in the statute, the medical evidence required must be such as to support the employer's finding that the employee's physical or mental condition is such that the employee can no longer work in such a capacity for state government or its equivalent under the adopted policy; such evidence may include certification by a medical doctor of such in capacity. Ranck, August 14, 1998, A.G. Op. #98-0313.

In the absence of any provision under state law for a municipal leave donation program, a municipality under the authority of home rule may adopt or enact a program similar to the one applicable to state employees under subsection (8) of this section. Mitchell, August 6, 1999, A.G. Op. #99-0372.

The phrase "hours of service" as used in subdivision (8)(*l*)(ii) of this section includes actual hours worked in addition to any paid time off using accrued vacation or medical leave. The phrase does not include any unpaid leave. Horhn, July 18, 2003, A.G. Op. 03-0308.

Section 25-11-103(i) authorizes a political subdivision to tailor a local personnel policy of its own, affording more or less leave benefits than those afforded state employees. However, if a political subdivision, such as a water and sewer district, affords more leave benefits to its employees such leave policies may not enlarge the benefits afforded to such employees in the state retirement system and such leave should not be reported to the PERS. Fonda, Feb. 27, 2004, A.G. Op. 04-0054.

§ 25-3-97. Records; final payments upon leaving state employment; affidavits as to absences; transfer of accrued leave; employee's death.

OPINIONS OF THE ATTORNEY GENERAL

State law and regulations governing the Statewide Personnel System do not reflect a right of state employees classified as exempt under the Federal Labor Standards Act to payment for accumulated compensatory time. Head, June 25, 1992, A.G. Op. #92-0444.

Limitation placed on appointing authority in granting earned and accumulated personal leave to employee is that said appointing authority can grant no more personal leave than that which has been accumulated or earned by employee. Head Nov. 29, 1993, A.G. Op. #93-0824.

Pursuant to Section 25-3-93(4) and 25-3-97(5) if the district attorneys have adopted leave policies identical to the state and those policies authorize the transfer of accumulated leave from one district attorney's office to another, similar to a transfer between state agencies, then all such accumulated leave would be transferable. There would be no authority for the former employer to make a lump sum payment under these circumstances. Ranck, April 9, 1996, A.G. Op. #96-0170.

Section 25-3-97 refers to persons appointed to a position in state service or non-state service as defined in Section 25-9-107. Ranck, August 14, 1998, A.G. Op. #98-0313.

The statute authorizes the transfer of leave when a state employee transfers from one state agency to another, but does not provide for the transfer of leave accrued by employees who are not state service or nonstate service. Ranck, August 18, 1998, A.G. Op. #98-0314.

Consistent with and pursuant to IRS Revenue Ruling 86-109, neither federal nor state income taxes would be deducted from payments of accrued wages or vacation pay issued to a deceased state employee's designee or successor. Ranck, June 18, 1999, A.G. Op. #99-0230.

An employee who transferred between community colleges prior to July 1, 1998, is not entitled to leave that accumulated at the first community college; further, the employee could not have transferred leave under the pre-1998 statutory language, which allowed transfer of accumulated leave between state agencies. Michael, Apr. 27, 2001, A.G. Op. #01-0260.

Community and junior colleges are not covered by the state's leave law, but retain the authority to adopt their own leave policies so long as provisions therein for retirement credit do not exceed the state law provisions. Ready, Oct. 31, 2003, A.G. Op. 03-0331.

CHAPTER 4.

ETHICS IN GOVERNMENT

ARTICLE 1.

MISSISSIPPI ETHICS COMMISSION.

§ 25-4-15. Executive director; employees.

OPINIONS OF THE ATTORNEY GENERAL

Section 25-4-15 is sufficient authority for the Mississippi Ethics Commission to delegate its authority to issue subpoenas to its executive director once an official investigation in the matter has been initiated by the Commission. Crowe, December 6, 1996, A.G. Op. #96-0800.

ARTICLE 3.

CONFLICT OF INTEREST; IMPROPER USE OF OFFICE.

§ 25-4-101. Declaration of public policy.

OPINIONS OF THE ATTORNEY GENERAL

Member of Board of Directors for Mississippi Home Corporation could accept full time position as senior attorney for Mississippi Tort Claims Board; since both positions are in executive branch of state government, there is no violation of the separation of powers provisions of Article I, Sections 1 and 2, Mississippi Constitution of 1890 and there appears to be no violation of Mississippi Ethics in Government laws, Sections 25-4-101, et seq., since neither position has impact on appointment to or compensation of the other. Ketchins, March 9, 1994, A.G. Op. #93-1015.

Accepting as fact that no benefit will accrue to a board member/tenant by the installation of a culvert, and if the board finds on its minutes that the placement of the culvert would be of public benefit, under Section 25-4-101, there is no prohibition against a board member voting for the motion to install it. Blackwell, March 2, 1995, A.G. Op. #95-0069.

A municipality may not adopt ordinances that address the area of ethics, as this area has been preempted by state law. McKissack, Dec. 13, 2002, A.G. Op. #02-0119.

The Separation of Powers doctrine, Miss. Const., Art. 1, §§ 1-2, prohibits an individual from holding two offices in two different branches of government simultaneously. An individual may simultaneously serve as a member of a county school board and as county circuit clerk because both offices are within the executive branch of the government. Maples, February 16, 2007, A.G. Op. #07-00074, 2007 Miss. AG LEXIS 22.

§ 25-4-103. Definitions.

OPINIONS OF THE ATTORNEY GENERAL

Campaign contributions legally received from regulated utility companies during a prior Mississippi House of Representatives campaign, that were not spent during that campaign, can be used in a prospective upcoming campaign for Public Service Commissioner even though they would otherwise be prohibited contributions, so long as they were made prior to any discussion or consideration of running for Public Service Commissioner and prior to becoming a candidate for the office, as described in Miss. Code Ann. § 77-1-11. Ellington, February 9, 2007, A.G. Op. #07-00071, 2007 Miss. AG LEXIS 20.

§ 25-4-105. Certain actions, activities and business relationships prohibited or authorized; contracts in violation of section voidable; penalties.

OPINIONS OF THE ATTORNEY GENERAL

Based on a recent opinion from the Mississippi Ethics Commission a constable may not be employed by the sheriff's department without violating Section 25-4-105(3)(a). Rogers, January 10, 1996, A.G. Op. #96-0005.

Nepotism statute prohibiting a board of alderman from appointing a person who is related by blood or marriage within the third degree to a board member to one of five specific positions, that is, officer, clerk, stenographer, deputy or assistant, applies by its own terms to five positions only and, therefore, does not preclude the mayor and aldermen from appointing the mayor's brother as an operator/laborer in the water department. Thomas, January 9, 1998, A.G. Op. #97-0833.

A legislator will be prohibited by Article 4, § 109 of the Mississippi Constitution and § 25-4-105 from contracting with a Head Start agency receiving funding through the legislative appropriation process even if the funding is indirect. Jackson, September 4, 1998, A.G. Op. #98-0551.

State law contrary to 42 U.S.C.S. § 1437 is preempted, and a tenant may serve on a board of commissioners of a public housing authority/regional public housing authority until a court of competent jurisdiction rules otherwise. Johnson, III, May 19, 2000, A.G. Op. #2000-0265.

The prohibitions imposed by Constitutional Section 109 and Code Section 25-4-105(2) are eliminated if the school board and school superintendent follow the procedure stated in Code Section 37-7-333 when selecting a depository; however, the constitutional prohibitions are eliminated only with regard to the selection of a depository, and there would still be a conflict for other purposes, such as selecting and opening accounts in various banks, approval of securities pledged, and transfer and deposit of funds between depositories, etc. Manning, July 14, 2000, A.G. Op. #2000-0324.

A member of the state legislature may simultaneously serve as an elected municipal alderman, as both positions are squarely within the legislative branch of government. White, July 3, 2002, A.G. Op. #02-0134.

There is no conflict between § 25-1-53 and this section. The prohibitions contained therein are cumulative and individuals must comply with both statutes. Bowman, Feb. 27, 2004, A.G. Op. 04-0071.

§ 25-4-117. Criminal liability not precluded.

OPINIONS OF THE ATTORNEY GENERAL

The Mississippi Ethics Commission having opined that certain employment of a mayor would be prohibited by the ethics laws, he would not be immune to possible criminal prosecution if he elected to engage in such employment. King, May 24, 2002, A.G. Op. #02-0272.

CHAPTER 5.

REMOVALS FROM OFFICE

§ 25-5-1. Removals from office.

OPINIONS OF THE ATTORNEY GENERAL

Justice Court judge removed from office for violations of ethical rules is disqualified from being paid medical insurance or salary, until court of competent jurisdiction rules otherwise. Cooper, Sept. 30, 1992, A.G. Op. #92-0760.

Trustee of city-county library system is public officer. Once appointed, trustee of city-county library serves for term of five years and can only be removed pursuant to specific statutory provision. Raulston Sept. 30, 1993, A.G. Op. #93-0735.

The separation of powers doctrine, Miss. Const. of 1890, Art. 1, § 2, does not prohibit a city firefighter from serving simultaneously as a county supervisor. Although the two positions are within separate branches of the county government, a firefighter does not exercise substantial policy-making power at the core of the executive branch so there is no conflict. Inquiries concerning potential ethics issues should be referred to the Ethics Commission. Bowen, March 2, 2007, A.G. Op. #07-00094, 2007 Miss. AG LEXIS 85.

§ 25-5-15. Certification of county registrar.

OPINIONS OF THE ATTORNEY GENERAL

It is duty of circuit clerk as country registrar to count signatures and verify number submitted and Governor's office will determine validity of petition to remove member of county board of supervisors, which will be determined in accordance with Sections 25-5-17 through 25-5-21. Colom, August 5, 1993, A.G. Op. #93-0567.

CHAPTER 7.

FEES

Sec.

25-7-1. Lawful to demand specific fees only.
25-7-3. Clerk of the Supreme Court.
25-7-9. Clerks of the chancery court.
25-7-13. Clerks of the circuit court.
25-7-19. Sheriffs.
25-7-27. Marshals and constables.
25-7-29. Notaries public. [Repealed effective July 1, 2021].

§ 25-7-1. Lawful to demand specific fees only.

It shall be lawful for the Clerk of the Supreme Court, the clerks of the circuit and chancery courts, the clerks of the justice court, masters and commissioners in chancery, sheriffs, constables, justice court judges, and other officers and persons named in this chapter to demand, receive, and take the several fees hereinafter mentioned and allowed for any business by them respectively done by virtue of their several offices, and no more.

HISTORY: Codes, 1880, § 439; 1892, § 1987; 1906, § 2163; Hemingway's 1917, § 1844; 1930, § 1782; 1942, § 3928; Laws, 1981, ch. 471, § 47; Laws, 1982, ch. 423, § 28; Laws, 1986, ch. 459, § 30, eff from and after July 1, 1986; Laws, 2020, ch. 382, § 30, eff from and after July 1, 2021; Laws, 2020, ch. 382, § 30, eff from and after July 1, 2021.

Amendment Notes — The 2020 amendment, effective July 1, 2021, deleted "notaries public" following "justice court judges."

OPINIONS OF THE ATTORNEY GENERAL

In those instances where fees or costs are not set by statute, under Section 25-7-1, the Mississippi Department of Human Services may not enter into an agreement with the chancery clerks or other county officials (e.g., county sheriffs), providing for an agreed upon amount to be paid by MDHS for filing fees or other costs of a case. Taylor, July 10, 1995, A.G. Op. #95-0273.

§ 25-7-3. Clerk of the Supreme Court.

The Clerk of the Supreme Court shall charge the following fees:

(a) General docket fee, for filing the record on appeal in a civil or criminal case	$ 200.00
(b) Miscellaneous docket fee	50.00
(c) Confidential miscellaneous docket fee	200.00
(d) Admission of new attorneys	30.00
(e) Act of Congress certificate	25.00
(f) Certificate of admission replacement	25.00
(g) Certificate of good standing replacement	10.00
(h) Attest stamp	5.00
(i) Order from Minute Book	10.00
(j) Regular copying	.50 per page
(k) Copying from bound volumes or records	2.00 per page
(*l*) Copy of mandate	10.00
(m) Minimum copy charge	1.00
(n) Notary fee	2.50
(o) Decision list charge	5.00
(p) Handling charge and retrieval and delivery charges on completed Supreme Court records (to be retained out of deposit)	
On-site retrieval	10.00
Off-site retrieval	15.00
(q) Forfeited deposits on completed Supreme Court records	100.00
(r) Petition for rehearing	50.00

Said general docket fee shall be collected from the appellant by the clerk of the lower court and forwarded to the Clerk of the Supreme Court. The Clerk of the Supreme Court shall charge the maximum amount allowable by law for services rendered where charges for such services are provided by statute; for any other services rendered, the amount charged shall be consistent with the cost of providing such services. All fees shall be paid in the form of cash, cashier's check, or money order or by a check on the account of an attorney payable to the Clerk of the Supreme Court. All fees authorized to be assessed and collected by the Clerk of the Supreme Court shall be deposited into the State General Fund, except that One Hundred Dollars ($100.00) of the general docket fee set under paragraph (a), Twenty-five Dollars ($25.00) of the miscellaneous docket fee set under paragraph (b), One Hundred Dollars ($100.00) of the confidential miscellaneous fee set under paragraph (c), Fifteen Dollars ($15.00) of the act of Congress certificate set under paragraph (e), Ten Dollars ($10.00) of the certificate of admission replacement set under paragraph (f), Two Dollars and Fifty Cents ($2.50) of the attest stamp set under paragraph (h), Five Dollars ($5.00) of the order from minute book set under paragraph (i), Seven Dollars ($7.00) of the copy of mandate set under paragraph (*l*), Fifty Dollars ($50.00) of the forfeited deposits on completed Supreme Court records set under paragraph (q), Twenty-five Dollars ($25.00) of the petition for rehearing fee under paragraph (r), and the total amount charged for any other services rendered shall be deposited to the credit of the Judicial System Operation Fund established in Section 9-21-45.

HISTORY: Codes, 1880, § 440; 1892, § 1988; 1906, § 2164; Hemingway's 1917, § 1845; 1930, § 1783; 1942, § 3929; Laws, 1978, ch 335, § 35; Laws, 1984, ch. 407; Laws, 1986, ch. 490; Laws, 1989, ch. 336, § 1; Laws, 1993, ch. 386, § 1; Laws, 2012, ch. 329, § 3, eff from and after July 1, 2012.

Editor's Note — This section is set out above to correct an error in subsection (b) as it appears in the 2018 Replacement Volume 7.

§ 25-7-9. Clerks of the chancery court.

(1) The clerks of the chancery courts shall charge the following fees:

(a) For the act of certifying copies of filed documents, for each complete document .... $ 1.00

(b)(i) Recording each deed, will, lease, amendment, subordination, lien, release, cancellation, order, decree, oath, etc., per book and page listed where applicable, each deed of trust, or any other document, for the first five (5) pages .... $ 25.00

(ii) Each additional page .... $ 1.00

(c)(i) Recording oil and gas leases, cancellations, etc., including indexing in general indices; for the first five (5) pages .... $ 25.00

(ii) Recording each oil and gas assignment, amendment of assignment, release, etc., first five (5) pages .... $ 25.00

per additional assignee .... $ 18.00

(iii) Each additional page .... $ 1.00

(iv) Sectional index entries per section or subdivision lot .... $ 1.00

(v) Archive fee .... $ 1.00

(vi) Entering marginal notations, if requested on document or by cover letter, pertaining to the recording of any oil and gas document only per book and page .... $ 4.00

(d)(i) Furnishing copies of any papers of record or on file:
If performed by the clerk or his employee, per page ....$ .50
If performed by any other person, per page.....................$ .25
(ii) Entering marginal notations on documents of record ....$ 1.00

(e) For each day's attendance on the board of supervisors, for himself and one (1) deputy, each ....$ 20.00

(f) For other services as clerk of the board of supervisors an allowance shall be made to him (payable semiannually at the July and January meetings) out of the county treasury, an annual sum not exceeding..$3,000.00

(g) For each day's attendance on the chancery court, to be approved by the chancellor:
For the first chancellor sitting only, clerk and two (2) deputies, each...$ 85.00
For the second chancellor sitting, clerk only ....$ 85.00

Provided that the fees herein prescribed shall be the total remuneration for the clerk and his deputies for attending chancery court.

(h) On order of the court, clerks and not more than two (2) deputies may be allowed five (5) extra days for each term of court for attendance upon the court to get up records.

(i) For public service not otherwise specifically provided for, the chancery court may by order allow the clerk to be paid by the county on the order of the board of supervisors, an annual sum not exceeding..........$5,000.00

(j) For each civil filing, to be deposited into the Civil Legal Assistance Fund ....$ 5.00

The chancery clerk shall itemize on the original document a detailed fee bill of all charges due or paid for filing, recording and abstracting same. No person shall be required to pay such fees until same have been so itemized, but those fees may be demanded before the document is recorded.

(2) The following fee shall be a total fee for all services performed by the clerk with respect to any civil case filed that includes, but is not limited to, divorce, alteration of birth or marriage certificate, removal of minority, guardianship or conservatorship, estate of deceased, adoption, land dispute injunction, settlement of small claim, contempt, modification, partition suit, or commitment, which shall be payable upon filing and shall accrue to the chancery clerk at the time of filing. The clerk or his successor in office shall perform all duties set forth without additional compensation or fee ...$ 85.00

(3) For every civil case filed:

(a) An additional fee to be deposited to the credit of the Comprehensive Electronic Court Systems Fund established in Section 9-21-14.......$ 10.00

(b) An additional fee to be deposited to the credit of the Judicial System Operation Fund established in Section 9-21-45.........................$ 40.00

(4) Cost of process shall be borne by the issuing party. Additionally, should the attorney or person filing the pleadings desire the clerk to pay the cost to the sheriff for serving process on one (1) person or more, or to pay the cost of publication, the clerk shall demand the actual charges therefor, at the time of filing.

HISTORY: Codes, 1880, § 442; 1892, § 1991; 1906, § 2167; Hemingway's 1917, § 1848; 1930, §§ 1786, 1804; 1942, §§ 3932, 3952; Laws, 1928, chs. 87, 227; Laws, 1940, ch. 230; Laws, 1950, ch. 291; Laws, 1968, ch. 361, § 65; Laws, 1970, ch. 397, § 1; Laws, 1970, ch. 398, § 2; Laws, 1981, ch. 497, § 1; Laws, 1993, ch. 481, § 2; Laws, 2004, ch. 505, § 10; Laws, 2005, ch. 323, § 1; Laws, 2006, ch. 447, § 1; Laws, 2006, ch. 573, § 2; Laws, 2006, ch. 577, § 1; Laws, 2007, ch. 476, § 1; Laws, 2010, ch. 398, § 1; Laws, 2012, ch. 329, § 4, eff from and after July 1, 2012; Laws, 2019, ch. 485, § 5, eff from and after January 1, 2020; Laws, 2020, ch. 400, § 1, eff from and after passage (approved June 29, 2020).

Editor's Note — Laws of 2019, ch. 485, § 14, provides as follows:

"SECTION 14. This act shall take effect and be in force from and after January 1, 2020, except for Section 11, which shall take effect and be in force from and after July 1, 2019, and Sections 12 and 13, which shall take effect and be in force from and after the passage of this act [approved April 18, 2019]."

Amendment Notes — The 2019 amendment, effective January 1, 2020, in (1), redesignated former (b)(i) as (b) and therein inserted "each deed of trust, or any other document," and substituted "five (5) pages" for "fifteen (15) pages" and "$25.00" for "$10.00," deleted former (b)(ii), which read; "Sectional index entries per section or subdivision lot . . . $ 1.00," deleted former (c), which read: "Recording each deed of trust, for the first fifteen (15) pages . . .$ 15.00 Each additional page . . $ 1.00 Sectional index entries per section or subdivision lot . . $ 1.00," and redesignated the remaining paragraphs accordingly, inserted "per each book and page listed" in (c)(iii), in (g), substituted "$ 85.00" for "$50.00" twice; and rewrote (2) to delete the individual fees for listed services and provide a single total fee of $85.00 for all services performed by the clerk.

The 2020 amendment, effective June 29, 2020, in (1)(b), designated the two formerly undesignated paragraphs as (i) and (ii); and in (1)(c), in (i), substituted "five (5) pages" and "$25.00" for "fifteen (15) pages" and "$18.00" respectively, added (ii), designated the formerly undesignated second paragraph of (i) as (iii), redesignated former (ii) as (iv), rewrote former (iii), which read: "Recording each oil and gas assignment per assignee.......$ 18.00" and redesignated it (v), and added (vi).

OPINIONS OF THE ATTORNEY GENERAL

Chancery court clerks are entitled to receive fee of $30.00 for each day's attendance on chancery court when chancellor is hearing cases in term time or vacation or hearing ex parte matters; clerks are not entitled to receive fee when chancellor does not hold court or transact business of court. Barlow, March 16, 1990, A.G. Op. #90-0169.

Statute which allows chancery court clerks to charge set fees for "recording deeds, deeds of trust, wills, leases, amendments, subordinations, liens, orders, decrees, oaths, etc., including indexing," does not encompass recording of minutes of Board of Supervisors; allowance which authorizes up to $1,500 annually for "other services as clerk of board of supervisors" encompasses those duties relating to maintenance of board minutes. Hallum, May 22, 1990, A.G. Op. #90-0308.

Payment as set forth in statute is not contingent upon whether deputy is paid by county or paid by chancery clerk. Gex, August 29, 1990, A.G. Op. #90-0599.

It was question of fact as to whether or not someone not physically present was "in attendance" upon court and statute does not mention physical presence; for such claims made upon board of supervisors, board would have to make factual determination that deputy or clerk was in attendance upon board. Yeager, Sept. 20, 1990, A.G. Op. #90-0701.

Had legislature intended to authorize $2.00 per page fee for recording minutes, service so important and so commonly performed for boards of supervisors by chancery clerk's office, such would have been stated specifically in (1)(f) and not placed in general "etc." category. Brooks, Nov. 2, 1990, A.G. Op. #90-0742.

If Family Master is sitting, rather than chancellor, Chancery Clerk may be authorized to be paid fees for himself and his deputies as if first chancellor were sitting; fee for each day's attendance may not be reduced below $30.00, but it is up to chancellor to determine whether attendance is necessary. Adkins, July 22, 1992, A.G. Op. #92-0491.

Fee paid under Section 25-7-9(2) covers general services in connection with case; that fee does not cover ancillary matters such as filing land records or certifications that arise from case and separate fees for such services under Section 25-7-9(1) should be charged. Jones Nov. 10, 1993, A.G. Op. #93-0514.

There is $1.00 fee in addition to general $6.00 fee for sectional entries within one section or subdivision. If deed requires entry in two sections then $2.00 would be charged; if deed requires one entry or six in one section then charge is $1.00; same is true of subdivisions. Jones Nov. 10, 1993, A.G. Op. #93-0514.

Under Section 25-7-9, a chancery clerk may not require the payment of a fee for the filing of a Motion to Set Aside Judgment in a case that has already been filed. Reeves, April 6, 1995, A.G. Op. #95-0125.

Based on Section 25-7-9, a $30.00 court cost deposit is all that can be charged upon the filing of an uncontested divorce, unless the clerk makes a motion to the court for additional security and the court so orders. Sollie, August 14, 1995, A.G. Op. #95-0502.

Section 25-7-9(1)(b) does not apply to recording redemptions since Sections 25-7-21(4)(d) & (e) specifically provide fees for the recording and abstracting of redemptions from tax sales. The chancery clerk should not collect two fees for the performance of the same service. James, August 31, 1995, A.G. Op. #95-0459.

Under Section 25-7-9(1)(f) the proper fee for filing additional pages for UCC filings is $1.00. Jones, June 14, 1996, A.G. Op. #96-0348.

Assessments are not clerk's fees and therefore are not included in Section 25-7-9. Springer, November 22, 1996, A.G. Op. #96-0804.

A chancery clerk is no longer entitled to charge per page for the filing of a guardianship, even if the case was originally filed with the clerk's office prior to the change in the fee schedule. See Section 25-7-9. Springer, December 13, 1996, A.G. Op. #96-0857.

The $75 fee received by chancery clerks in lunacy cases covers all of the normal services that a court clerk would perform with regard to any petition or complaint before the court, but would not include administrative services which seem to be more like services that would be performed by a social worker, such as consultations with family or friends, scheduling physicians, providing insurance information to hospitals, and making arrangements for prescreening and follow-ups, etc.; thus, if the chancery court clerk performs such administrative services, the court may allow a reasonable fee therefor over and above the clerk's statutory filing fee. Britt, November 25, 1998, A.G. Op. #98-0689.

The chancery clerk may only charge the fee set out in subsection (1)(b) for each assignment filed, not for each document to which the assignment is applicable; thus, if there is only one assignment even though it may apply to multiple deeds of trust, only one document has been filed, and the filing fee is $6.00; for each document to which the assignment applies, and for which a marginal notation of the assignment must be made, the clerk may charge $0.50. McLeod, Mar. 29, 2002, A.G. Op. #02-0132.

A chancery clerk is not required to charge other county departments. Crook, June 14, 2002, A.G. Op. #02-0304.

The appellant must pay the appropriate filing fee to the chancery court to perfect an appeal from a decision of the Mississippi Department of Environmental Quality, subject to a pauper's right of appeal. Chisolm, July 10, 2002, A.G. Op. #02-0378.

There is no statutory authority for chancery clerks to charge flat monthly fees to abstractors for use of the fax machine in the office of the clerk or to charge fees for sending faxes to members of the public. Crook, Sept. 13, 2002, A.G. Op. #02-0334.

If a board of supervisors failed to budget enough money to cover the number of meetings actually held and attended by a chancery clerk that he attends and should be paid for, the department should petition the board for any budget revision needed to fulfill the statutory mandates of this section. Crook, Jan. 17, 2003, A.G. Op. #02-0667.

If the chancery judge orders an amount paid by the county for "public service not otherwise specifically provided for" and a board of supervisors has not budgeted any amount of the sum, this section allows, but does not require, a board of supervisors to make the payment. Crook, Jan. 17, 2003, A.G. Op. #02-0667.

There is no requirement in Section 9-5-131 et seq., which would require a chancery clerk to post foreclosure notices and execute an affidavit stating that the same was posted, nor is there such requirement or authority in Sections 25-7-9, 25-7-11, and 89-1-53 et. seq., however, pursuant to Sections 25-7-33 and 25-7-45, if a clerk chooses to post such notices, he may assess a fee of $ .25 for executing an affidavit stating that the same was posted. Gex, Mar. 14, 2003, A.G. Op. #03-0112.

This section, prior to the 2004 amendment, authorized the charging of a $ 1.00 fee for each sectional index entry per section or subdivision necessary to properly reflect the recording of the warranty deed, deed of trust and subordination affecting all of the lots in question. O'Donnell, Feb. 4, 2005, A.G. Op. 04-0638.

Section 25-7-9 must be read along with Uniform Chancery Court Rule 9.01. Reeves, Apr. 21, 2006, A.G. Op. 06-0129.

Where the plaintiff files a complaint against the defendant, and the defendant files an answer containing one or more counterclaims, there is no basis to charge the $25.00 fee. But when one of the defendants of the original cause of action files a complaint against another of the original defendants, then the clerk may charge the original defendant filing this new complaint with a co-defendant in the original cause of action the $25.00 fee. Likewise, where one of the plaintiffs in the original cause of action files a complaint against another of the original plaintiffs, then the Clerk may charge the original plaintiffs filing this new complaint against a co-plaintiff in the original cause of action the $25.00 fee. Reeves, Apr. 21, 2006, A.G. Op. 06-0129.

§ 25-7-11. Recording fees itemized.

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There is no requirement in Section 9-5-131 et seq., which would require a chancery clerk to post foreclosure notices and execute an affidavit stating that the same was posted, nor is there such requirement or authority in Sections 25-7-9, 25-7-11, and 89-1-53 et. seq., however, pursuant to Sections 25-7-33 and 25-7-45, if a clerk chooses to post such notices, he may assess a fee of $ .25 for executing an affidavit stating that the same was posted. Gex, Mar. 14, 2003, A.G. Op. #03-0112.

§ 25-7-13. Clerks of the circuit court.

(1) The clerks of the circuit court shall charge the following fees:

(a) Docketing, filing, marking and registering each complaint, petition and indictment .... $ 85.00

The fee set forth in this paragraph shall be the total fee for all services performed by the clerk up to and including entry of judgment with respect to each complaint, petition or indictment, including all answers, claims, orders, continuances and other papers filed therein, issuing each writ, summons, subpoena or other such instruments, swearing witnesses, taking and recording bonds and pleas, and recording judgments, orders, fiats and certificates;

the fee shall be payable upon filing and shall accrue to the clerk at the time of collection. The clerk or his successor in office shall perform all duties set forth above without additional compensation or fee.

(b) Docketing and filing each motion to renew judgment, notice of renewal of judgment, suggestion for a writ of garnishment, suggestion for a writ of execution and judgment debtor actions and issuing all process, filing and recording orders or other papers and swearing witnesses ... $ 35.00

(c) For every civil case filed, an additional fee to be deposited to the credit of the Comprehensive Electronic Court Systems Fund established in Section 9-21-14 ... $ 10.00

(d) For every civil case filed, an additional fee to be deposited to the credit of the Judicial System Operation Fund established in Section 9-21-45 ... $ 40.00

(2) Except as provided in subsection (1) of this section, the clerks of the circuit court shall charge the following fees:

(a) Filing and marking each order or other paper and recording and indexing same ... $ 2.00

(b) Issuing each writ, summons, subpoena, citation, capias and other such instruments ... $ 1.00

(c) Administering an oath and taking bond ... $ 2.00

(d) Certifying copies of filed documents, for each complete document ... $ 1.00

(e) Recording orders, fiats, licenses, certificates, oaths and bonds:

First page ... $ 2.00

Each additional page ... $ 1.00

(f) Furnishing copies of any papers of record or on file and entering marginal notations on documents of record:

If performed by the clerk or his employee, per page ... $1.00

If performed by any other person, per page ... $.25

(g) Judgment roll entry ... $ 5.00

(h) Taxing cost and certificate ... $ 1.00

(i) For taking and recording application for marriage license, for filing and recording consent of parents when required by law, for filing and recording medical certificate, filing and recording proof of age, recording and issuing license, recording and filing returns ... $ 35.00

The clerk shall deposit Fourteen Dollars ($14.00) of each fee collected for a marriage license in the Victims of Domestic Violence Fund established in Section 93-21-117, on a monthly basis.

(j) For certified copy of marriage license and search of record, the same fee charged by the Bureau of Vital Statistics of the State Board of Health.

(k) For public service not particularly provided for, the circuit court may allow the clerk, per annum, to be paid by the county on presentation of the circuit court's order, the following amount ... $5,000.00

However, in the counties having two (2) judicial districts, such above allowance shall be made for each judicial district.

(*l*) For drawing jurors and issuing venire, to be paid by the county .... $ 5.00

(m) For each day's attendance upon the circuit court term, for himself and necessary deputies allowed by the court, each to be paid by the county .... $ 75.00

(n) Summons, each juror to be paid by the county upon the allowance of the court .... $ 1.00

(o) For issuing each grand jury subpoena, to be paid by the county on allowance by the court, not to exceed Twenty-five Dollars ($25.00) in any one (1) term of court .... $ 1.00

(p) For each civil filing, to be deposited into the Civil Legal Assistance Fund .... $ 5.00

(3) On order of the court, clerks and deputies may be allowed five (5) extra days for attendance upon the court to get up records.

(4) The clerk's fees in state cases where the state fails in the prosecution, or in cases of felony where the defendant is convicted and the cost cannot be made out of his estate, in an amount not to exceed Four Hundred Dollars ($400.00) in one (1) year, shall be paid out of the county treasury on approval of the circuit court, and the allowance thereof by the board of supervisors of the county. In counties having two (2) judicial districts, such allowance shall be made in each judicial district; however, the maximum thereof shall not exceed Eight Hundred Dollars ($800.00). Clerks in the circuit court, in cases where appeals are taken in criminal cases and no appeal bond is filed, shall be allowed by the board of supervisors of the county after approval of their accounts by the circuit court, in addition to the above fees, for making such transcript the rate of Two Dollars ($2.00) per page.

(5) The clerk of the circuit court may retain as his commission on all money coming into his hands, by law or order of the court, a sum to be fixed by the court not exceeding one-half of one percent (1/2 of 1%) on all such sums.

(6) For making final records required by law, including, but not limited to, circuit and county court minutes, and furnishing transcripts of records, the circuit clerk shall charge Two Dollars ($2.00) per page. The same fees shall be allowed to all officers for making and certifying copies of records or papers which they are authorized to copy and certify.

(7) The circuit clerk shall prepare an itemized statement of fees for services performed, cost incurred, or for furnishing copies of any papers of record or on file, and shall submit the statement to the parties or, if represented, to their attorneys within sixty (60) days. A bill for same shall accompany the statement.

HISTORY: Codes, 1880, § 443; 1892, § 1993; 1906, § 2169; Hemingway's 1917, § 1850; 1930, §§ 1788, 1804; 1942, §§ 3934, 3952; Laws, 1928, chs. 87, 227; Laws, 1938, ch. 292; Laws, 1940, ch. 230; Laws, 1948, ch. 237; Laws, 1950, ch. 239; Laws, 1958, ch. 330; Laws, 1968, ch. 361, § 65; Laws, 1968, ch. 398, §§ 1, 2; Laws, 1978, ch. 361, § 1; Laws, 1985, ch. 461, § 2; Laws, 1993, ch. 481, § 3; Laws, 1994, ch. 406, § 1; Laws, 1995, ch. 537, § 1; Laws, 1999, ch. 485, § 1; Laws, 2001, ch. 344, § 1; Laws, 2004, ch. 505, § 9; Laws, 2006, ch. 327, § 1; Laws, 2006, ch. 573, § 3; Laws,

2006, ch. 577, § 2; Laws, 2008, ch. 473, § 1; Laws, 2012, ch. 329, § 5; Laws, 2012, ch. 355, § 1, eff from and after July 1, 2012; Laws, 2019, ch. 385, § 1, eff from and after July 1, 2019; Laws, 2019, ch. 485, § 6, eff from and after January 1, 2020.

Joint Legislative Committee Note — Section 1 of Chapter 385, Laws of 2019, effective July 1, 2019 (approved March 22, 2019), amended this section. Section 6 of Chapter 485, Laws of 2019, effective January 1, 2020 (approved April 18, 2019), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 12, 2019, meeting of the Committee.

Editor's Note — Laws of 2019, ch. 485, § 14, provides as follows:

"SECTION 14. This act shall take effect and be in force from and after January 1, 2020, except for Section 11, which shall take effect and be in force from and after July 1, 2019, and Sections 12 and 13, which shall take effect and be in force from and after the passage of this act [approved April 18, 2019]."

Amendment Notes — The first 2019 amendment (ch. 385) substituted "$35.00" for "$25.00" in (2)(i).

The second 2019 amendment (ch. 485), effective January 1, 2020, substituted "$75.00" for "$50.00" in (2)(m).

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Minutes of courts are undoubtedly final records required by law, and Attorney General's office is therefore unable to say that statute does not allow circuit clerks up to $2.00/page for preparation and recording of minutes of courts. Parker, March 6, 1990, A.G. Op. #90-0092.

Whether the attendance of a deputy is necessary is a question of fact for the judge to determine; if the judge believes the attendance of a deputy or deputies was necessary on any particular day then the court should allow the additional fees for attendance by the deputy or deputies. Thomas, Nov. 6, 1991, A.G. Op. #91-0765.

A deputy who substitutes for a clerk, when the clerk is supposed to attend, is necessary. If the business of the court requires the clerk and one or more deputies then the deputies are necessary. Thomas, Nov. 6, 1991, A.G. Op. #91-0765.

If so ordered by the court, an outgoing circuit clerk may be entitled to his commission on fees for work performed during his term, even though the case may not be concluded until after his term has ended. Ferguson, June 24, 1992, A.G. Op. #92-0447.

Circuit clerk's fee for taking pauper affidavits in criminal cases is not under Section 25-7-13(1) but rather compensation is provided for under subsection (2)(k) which allows per annum amount of $5,000. Ferguson, March 9, 1994, A.G. Op. #93-1016.

Based on Section 25-7-13, the clerk would not be entitled to additional fees for more than one writ, capias or subpoena associated with a single case. Pryor, April 12, 1996, A.G. Op. #96-0185.

Applying Section 25-7-13(1)(a) a clerk would not be entitled to collect a docketing fee when a case is remanded to the file and later reinstated or when a case is removed to Federal Court and later returned to the court since the clerk would have already collected a fee for the original complaint. Carpenter, November 1, 1996, A.G. Op. #96-0743.

Applying Section 25-7-13(1)(a) a clerk is entitled to collect a docketing fee for a case that has been transferred from another court or when a case is received on a change of venue since the clerk would be performing a service for the first time with regard to that complaint. Carpenter, November 1, 1996, A.G. Op. #96-0743.

A clerk is limited to the fee provided for under subsection (1) of this section, and to additional fees provided for under subsection (2) that are not included in subsection (1). Services charged for under paragraphs 2(a) to 2(c) are provided for in subsection (1) as "service performed by the clerk with respect to each complaint, petition or indictment". Bryant, Aug. 22, 1997, A.G. Op. #97-0487.

A circuit clerk may be entitled to a commission to be determined by the court of up to one-half of one percent on eminent domain cases. Parker, February 4, 1998, A.G. Op. #97-0775.

A circuit court judge may exercise his discretion to allow the circuit clerk to retain up to ½ of 1 percent of fines that are paid through the circuit clerk's office. Johnson, February 26, 1999, A.G. Op. #99-0061.

The phrase "attending to the court," for purposes of subsection (2)(m), includes working on the court's business in the clerk's office, as well as actually being inside the courtroom or the judges' chambers. Evans, Jan. 25, 2002, A.G. Op. #02-0023.

A county circuit clerk is entitled to be paid once for himself or a deputy for each day of the term then in session and the court may authorize additional deputies for the term then in session, and the court may allow up to five additional days for the clerk and deputies when the court is not in session to get up records. Osborne, Mar. 1, 2002, A.G. Op. #02-0045.

§ 25-7-15. Allowances for deputy circuit court clerks.

OPINIONS OF THE ATTORNEY GENERAL

Board of supervisors is not required to contribute county funds in excess of statutory amounts; issue of compensating deputy circuit clerks whether for working overtime or otherwise is matter that must be resolved between clerk and his deputies, and is not issue that rests with board of supervisors. Slade, March 16, 1990, A.G. Op. #90-0175.

Miss. Code Section 25-7-15(1) clearly applies only to counties "having two (2) judicial districts". Slade, Feb. 3, 1993, A.G. Op. #93-0025.

§ 25-7-19. Sheriffs.

(1) The sheriffs of the various counties of the State of Mississippi shall charge the following fees:

(a) A uniform total fee in all criminal and civil cases for the service or attempted service of any process, summons, warrant, writ or other notice as may be required by law or the court, each ....$ 45.00

(b) In all cases where there is more than one (1) defendant residing at the same household, service on each additional defendant .... $ 5.00

(c) After final judgment has been enrolled, notice of further proceedings involving levy of execution on judgments, and attachment and garnishment proceedings, shall be deemed a new suit and the sheriff shall be entitled to the following fee .... $ 45.00

(d) Taking bonds of every kind (for purposes of this fee multiple bonds for criminal charges arising out of a single incident or transaction shall be considered a single bond) .... $ 25.00

(e) Attendance in habeas corpus proceeding in vacation, eminent domain court and commitment cases .... $ 25.00

(f) On all money made by virtue of any decree, execution or attachment, or other process, the following commissions, to wit:

On the first One Hundred Dollars ($100.00), five percent (5%),
On the second One Hundred Dollars ($100.00), four percent (4%),
On all sums over Two Hundred Dollars ($200.00), three percent (3%).

(g) For all service of all process of every kind and nature issued from without the county wherein it is to be served, a fee of .... $ 45.00

In civil cases, all process sent out of the county, where issued to another county for service, shall be accompanied by a fee of Forty-five Dollars ($45.00) to pay the sheriff's fee for his execution of such process unless the clerk or justice shall endorse on the process that the party at whose instance it issued had filed an affidavit of inability to pay costs thereof. All fees sent and unearned, and the whole of it, shall be unearned if the writ be not legally and properly executed and returned, and shall be remitted by the sheriff with the writ at his own expense.

(2)(a) The sheriff shall keep a complete account of every fee of every nature, commission or charge collected by him, and shall file an itemized statement thereof monthly, under oath, with the clerk of the board of supervisors of his county who shall preserve same as a part of the records of his office, and he shall make a remittance to the clerk of the board of supervisors of his county on or before the fifteenth of each month for deposit into the general fund of the county of all said fees, commissions and charges collected during the preceding month. A fee for attempted service of process is unearned absent two (2) documented actual attempts to serve the process.

(b) At least Ten Dollars ($10.00) from each fee collected and deposited into the county's general fund under the provisions of paragraphs (a), (c) and (g) of subsection (1) of this section shall be used for the sheriffs' salaries authorized in Section 25-3-25, as such Ten Dollar ($10.00) amount was authorized during the 2007 Regular Session in Chapter 331, Laws of 2007, for the purpose of providing additional monies to the counties for sheriffs' salaries.

(3) Any sheriff who shall knowingly fail to collect any fee established by law which was in fact collectible by him or having collected the fee shall fail to keep account of such fee or fail to deposit the fee with the clerk of the board of supervisors as provided by subsection (2), or such other person or office entitled thereto, shall be guilty of a misdemeanor in office and, upon conviction therefor, shall be fined in an amount not to exceed double the amount he failed to collect or pay over, or imprisoned for not to exceed six (6) months in the county jail, or be punished by both such fine and imprisonment.

This provision shall in no way lessen the sheriff's civil liability on his bond, but shall be an additional penalty for misfeasance or nonfeasance in office.

HISTORY: Codes, 1880, § 444; 1892, § 1994; 1906, § 2170; Hemingway's 1917, § 1857; 1930, § 1789; 1942, §§ 3936, 3936.5; Laws, 1928, Ex ch. 17; Laws, 1930, ch. 119; Laws, 1932, ch. 201; Laws, 1938, Ex ch. 24; Laws, 1944, chs. 179, 320, § 1; Laws, 1950, ch. 250; Laws, 1952, ch. 217; Laws, 1958, chs. 321, 327; Laws, 1960, chs. 330, 331; Laws, 1964, ch. 421, § 1; Laws, 1966, ch. 440, § 1; Laws, 1968, ch.

361, § 1; Laws, 1970, ch. 399, § 1; Laws, 1971, ch. 318, § 1; Laws, 1974, ch. 324; Laws, 1977, ch. 442; Laws, 1980, ch. 455; Laws, 1993, ch. 366, § 1; Laws, 2007, ch. 331, § 1; Laws, 2014, ch. 323, § 1; Laws, 2015, ch. 404, § 1, eff from and after July 1, 2015; Laws, 2019, ch. 485, § 7, eff from and after January 1, 2020.

Editor's Note — Laws of 2019, ch. 485, § 14, provides as follows:

"SECTION 14. This act shall take effect and be in force from and after January 1, 2020, except for Section 11, which shall take effect and be in force from and after July 1, 2019, and Sections 12 and 13, which shall take effect and be in force from and after the passage of this act [approved April 18, 2019]."

Amendment Notes — The 2019 amendment, effective January 1, 2020, in (1), substituted "$45.00" for "$35.00" three times; and substituted "Forty-five Dollars ($45.00)" for "Thirty-five Dollars (35.00)" in the last paragraph.

OPINIONS OF THE ATTORNEY GENERAL

Sheriff is entitled to $7.00 fee for bond taken on prisoner in sheriff's custody regardless of whether prisoner is county or city prisoner, but not when prisoner is taken to city court and city allows him to bond while there. Cross, Nov. 18, 1992, A.G. Op. #92-0841.

Miss. Code Section 25-7-19 has been amended to increase from $7 to $25 uniform fees allowed to county sheriffs for executing service of any process, summons, warrant, writ or other notice as may be required by law or courts. Robinson, May 12, 1993, A.G. Op. #93-0312.

Issuing traffic ticket does not constitute service for which sheriff is entitled to charge fee under Miss. Code Section 25-7-19(1)(a). Ferguson, May 24, 1993, A.G. Op. #93-0329.

When state agency seeks to have process served sheriff should serve all process and perform other services for state agency without prepayment of costs; state agency is exempted from prepayment of costs, but not from payment if court assesses costs against agency at conclusion of case. Lambert Sept. 1, 1993, A.G. Op. #93-0561.

Fee set forth in Section 25-7-19(1)(d) of $25.00 is fee to be paid to sheriff for approving bond; if sheriff approves bond, sheriff is entitled to fee; if person other than sheriff, i.e., municipal police officer, approves bond, sheriff is not entitled to fee. Young Dec. 9, 1993, A.G. Op. #93-0872.

Salaried employee of municipality, such as city clerk, may not receive in individual capacity fees collected pursuant to ad valorem tax sales nor may police officer receive fees set forth for sheriff for service of tax sale notices. Hayslett, Jan. 12, 1994, A.G. Op. #93-0961.

Generally, justice court should direct process service to constable; however, when process is required to be directed to sheriff because constable is unqualified or unavailable, sheriff should charge fees as prescribed by 25-7-19 for "papers" to be served issued by justice court. Glennis, Jan. 20, 1994, A.G. Op. #93-0785.

Once sheriff brings to attention of court that criminal fee is owed to county, this being done by making return on process, sheriff would not be liable under Subsection (3) of Section 25-7-19; sheriff must keep prisoner under terms set out in order of commitment issued by court and can not require that prisoner serve additional time or work additional days in order to pay off court cost and jail fees not included in the court's order of commitment. Price, March 31, 1994, A.G. Op. #93-0795.

The officer conducting the sale, under Section 25-7-19(1)(f), does hold out of the proceeds the fees and costs of the sale. The remaining proceeds, unless contested or when liability is in doubt, are applied to judgment liens in order of priority until satisfied. Any overage is returned to the judgment debtor. The return made to the court sets out the property levied on, proceeds of the sale and application of the proceeds and requests the court to award any costs and fees not set by law. Hooks, April 5, 1996, A.G. Op. #96-0163.

The sheriff's commission is computed on all money made by virtue of the execution and sale as provided by Section 25-7-19(1)(f), however Section 27-41-107 states that the minimum total of all fees shall be ten dollars. Hollimon, July 12, 1996, A.G. Op. #96-0400.

The $25.00 service of process fee is a statutorily imposed court cost only if the process is served by certain law enforcement officials; there are no provisions for a private citizen (off-duty law enforcement officer) to serve a criminal warrant or to be paid for such service. Carter, Dec. 17, 1999, A.G. Op. #99-0668.

A board of supervisors could adopt a resolution for the county sheriff's department to charge a fee for performing criminal background checks, fingerprinting, etc., and the funds generated thereby should be paid into the general fund on a monthly basis. Trapp, Jr., June 7, 2002, A.G. Op. #02-0286.

§ 25-7-21. Tax collectors.

OPINIONS OF THE ATTORNEY GENERAL

Section 25-7-9(1)(b) does not apply to recording redemptions since Sections 25-7-21(4)(d) & (e) specifically provide fees for the recording and abstracting of redemptions from tax sales. The chancery clerk should not collect two fees for the performance of the same service. James, August 31, 1995, A.G. Op. #95-0459.

Sections 25-7-21(4)(b) & (c) has fees applicable to recording a deed that has matured to the purchaser at the land sale after the end of the redemption period. These fees apply when issuing a tax deed to the purchaser at a tax sale. James, August 31, 1995, A.G. Op. #95-0459.

The fee set forth in subsection (4)(a) for taking the acknowledgment and filing the deed to land sold to individuals for taxes is imposed only if title matures in the purchaser. Spratlin, Feb. 22, 2002, A.G. Op. #02-0030.

A city does not pay the $ 1.00 fee set forth in subsection (4)(a) unless the property was struck to the city at a tax sale and has matured to the city. Spratlin, Feb. 22, 2002, A.G. Op. #02-0030.

If a justice court makes a finding in favor of the landlord in a proceeding for an eviction or removal, the court must immediately issue a warrant of removal according to §§ 89-7-35 or 89-7-41; the constable is entitled to a $25.00 fee for the service of the warrant as allowed by § 25-7-27(1)(b), but there is no provision for the justice court to charge any additional fee, other than the constable's fee, for the warrant of removal. Carter, Apr. 5, 2002, A.G. Op. #02-0157.

§ 25-7-25. Justice courts.

OPINIONS OF THE ATTORNEY GENERAL

Costs and fees in justice court must be paid in advance to clerk of justice court, they should not be paid to judge. Riggs Dec. 9, 1993, A.G. Op. #93-0794. Foote v. State, 115 So. 886 (Miss. 1928).

$10.00 fee celebrating marriage, and certificate thereof goes to county; fee is not contingent upon judge charging fee, therefore, clerk is still mandated to collect this amount; as regards fees, there is no distinction between marriages performed outside courtroom or inside courtroom. Riggs Dec. 9, 1993, A.G. Op. #93-0794. Jones v. State, 115 So. 886 (Miss. 1928).

A justice court judge is an ex officio notary public, but may not receive additional fees for such services. Hatfield, August 10, 1998, A.G. Op. #98-0460.

A constable is not entitled to receive a fee for service of process unless that process is actually served; if the constable returns the process "unable to serve" or "not found," then he has not actually served the process and he is not entitled to a fee. Fortier, October 9, 1998, A.G. Op. #98-0599.

There is no provision for a justice court to charge a jail cost as a cost of court for each day that a defendant is incarcerated. Nowak, Oct. 25, 2002, A.G. Op. #02-0620.

A county may not impose any additional assessments in justice court that are not statutorily authorized. Trapp, Oct. 24, 2003, A.G. Op. 03-0570.

Funds generated from assessment of traffic fines can be expended only for the DARE program or a similar program. Tolar, Apr. 14, 2006, A.G. Op. 06-0072.

§ 25-7-27. Marshals and constables.

(1) Marshals and constables shall charge the following fees:

(a)(i) In all civil and criminal cases, for each service of process, summons, warrant, writ or other notice $45.00

(ii) In all cases where there is more than one (1) defendant residing at the same household, for service on each additional defendant ..... $ 5.00

(iii) For service of each process of every kind and nature issued from outside the county where it is to be served, the fees provided in subparagraphs (i) and (ii) of this paragraph, as applicable, shall be assessed.

(iv) When a complaining party has provided erroneous information to the clerk of the court relating to the service of process on the defendant or defendants and process cannot be served after diligent search and inquiry on oath thereof of the marshal or constable, as the case may be, charged with serving such process, the fees provided in subparagraphs (i) and (ii) of this paragraph, as applicable, shall be assessed.

(v) When process has been attempted in one (1) county but the defendant is not found, and process must be served on that defendant in another county, the clerk shall notify the complaining party that an additional fee or fees must be paid before the process can be delivered to the other county.

(b) After final judgment has been enrolled, further proceedings involving levy of execution on judgments, and attachment and garnishment proceedings shall be a new suit for which the marshal or constable shall be entitled to the following fee $45.00

(c) For conveying a person charged with a crime to jail, mileage reimbursement in an amount not to exceed the rate established under Section 25-3-41(2).

To be paid out of the county treasury on the allowance of the board of supervisors, when the state fails in the prosecution, or the person is convicted but is not able to pay the costs.

(d) For other service, the same fees allowed sheriffs for similar services.

(e) For service as a bailiff in any court in a civil case, to be paid by the county on allowance of the court on issuance of a warrant therefor, an amount equal to the amount provided under Section 19-25-31 for each day, or part thereof, for which he serves as bailiff when the court is in session.

(f) For serving all warrants and other process and attending all trials in state cases in which the state fails in the prosecution, to be paid out of the county treasury on the allowance of the board of supervisors without itemization, subject, however, to the condition that the marshal or constable must not have overcharged in the collection of fees for costs, contrary to the provisions of this section, annually $2,500.00

(2) Marshals and constables shall be paid all uncollected fees levied under subsection (1) of this section in full from the first proceeds received by the court from the guilty party or from any other source of payment in connection with the case.

(3) In addition to the fees authorized to be paid to a constable under subsection (1) of this section, a constable may receive payments for collecting delinquent criminal fines in justice court pursuant to the provisions of Section 19-3-41(3).

HISTORY: Codes, 1880, § 452; 1892, § 2008; 1906, § 2184; Hemingway's 1917, § 1865; 1930, § 1793; 1942, § 3941; Laws, 1920, ch. 132; Laws, 1944, ch. 186; Laws, 1946, ch. 406; Laws, 1952, ch. 243; Laws, 1958, ch. 323; Laws, 1972, ch. 421, § 1; Laws, 1975, ch. 377; Laws, 1978, ch. 333, § 1, ch. 450, § 1; Laws, 1986, ch. 441, § 4; Laws, 1986, ch. 459, § 31; Laws, 1987; ch. 366, § 1; Laws, 1992, ch. 504, § 1; Laws, 1999, ch. 516, § 2; Laws, 2004, ch. 505, § 8; Laws, 2006, ch. 325, § 1; Laws, 2007, ch. 331, § 2, eff June 15, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2019, ch. 485, § 8, eff from and after January 1, 2020.

Editor's Note — Laws of 2019, ch. 485, § 14, provides as follows:

"SECTION 14. This act shall take effect and be in force from and after January 1, 2020, except for Section 11, which shall take effect and be in force from and after July 1, 2019, and Sections 12 and 13, which shall take effect and be in force from and after the passage of this act [approved April 18, 2019]."

Amendment Notes — The 2019 amendment, effective January 1, 2020, in (1)(a), rewrote (i), which read: "A uniform total fee in all civil cases, whether contested or uncontested, which shall include all services in connection therewith, except as stated otherwise in this section, each...$35.00," deleted former (ii), which provided a separate uniform total fee in criminal cases, redesignated former (iii) as (ii), and therein inserted "residing at the same household," added (iii), and rewrote (iv) and (v), which read: "When a complaining party has provided erroneous information to the clerk of the court relating to the service of process on the defendant or defendants and process cannot be served after diligent search and inquiry, the uniform fee shall be assessed upon subsequent successful service and an additional fee shall be due in the following amount...$15.00 (v) When a complaining party has provided erroneous information to the clerk of the court relating to the service of process on the defendant or defendants and process cannot be served after diligent search and inquiry, and a defendant is served in a county other than the county in which a suit was filed, the constable in the county in which the suit was filed shall receive an additional fee, upon successful service of the defendant, in the following amount...$15.00"; in (1)(b), substituted "$45.00" for "$35.00"; in (1)(e), substituted "the amount provided under Section 19-25-31" for "the per diem compensation provided under Section 25-3-69"; and in (1)(f), substituted "$2,500.00" for "$1,800.00."

OPINIONS OF THE ATTORNEY GENERAL

Fee for transporting prisoner from point of arrest to jail is fee that is paid by county where state fails in prosecution or person is unable to pay cost, and is paid in addition to state fail fee. Redden, March 28, 1990, A.G. Op. #90-0200.

$15.00 fee represents total compensation allowed constable for both his original service and his subsequent contempt process service; in event constable was not involved in original criminal trial, service of contempt process would generate fee of $15.00; however, in no event would constable be entitled to receive additional $10.00 fee for serving contempt process, as this fee represents additional compensation constable receives for serving executions, attachments and garnishments. Bridges, June 13, 1990, A.G. Op. #90-0394.

Because a constable is not involved in service of process on nonresident defendants by certified mail, a fee may not be charged by him for such service. Lamar, Jan. 8, 1992, A.G. Op. #91-0963.

Constable is entitled to fee allowed for service of writs of replevin and warrants of removal. Shuffield, July 22, 1992, A.G. Op. #92-0500.

Miss. Code Section 25-7-27 provides for fees to be collected by constables; if constable has not completed required training, justice court clerk should not collect constable fee; however, even though constable who has not completed his training may not receive fees for serving justice court process, he must still faithfully serve and return any assigned papers. Aldridge, Feb. 3, 1993, A.G. Op. #93-0001.

Although duly elected constable may not receive compensation for service of process in Justice Courts other than fee provided for in statute, with respect to other courts, under Rule 4 of MRCP, constable, like any other individual above age of 18 who is not party to lawsuit, may receive compensation for service of process as private process server. Walters, August 11, 1993, A.G. Op. #93-0483.

When constable executes service on wrong address supplied by plaintiff, constable is entitled to his fee, but if constable is later ordered by summons to execute process on defendant at different address, he must do so without any additional fee. Foretich, Jan. 12, 1994, A.G. Op. #93-0902.

A Justice Court Judge cannot by court order increase the fee a Constable can receive for service process. Younger, January 11, 1995, A.G. Op. #95-0003.

If a constable has been in office more than twenty-four months, as provided in Section 45-6-11, the statute would preclude a county from compensating a constable for fees generated under Section 25-7-27(1)(e), for serving warrants and other process, attending all trials in state cases in which the state fails in the prosecution, prior to satisfying the training requirement of Section 19-19-5(2), as amended. Carroll, February 16, 1995, A.G. Op. #95-0072.

Section 25-7-27(3) provides that constables shall be paid all uncollected fees from the first proceeds received by the court from the guilty party or from any other source of payment in connection with the case. Farmer, June 22, 1995, A.G. Op. #95-0367.

Under Section 25-7-27(1)(a), only one fee can be collected by a constable for all process served in each one case. Shuffield, June 22, 1995, A.G. Op. #95-0361.

In regards to serving warrants for contempt of court, when a constable has already been paid a fee for services as allowed by Section 25-7-27(1)(a), for the underlying case, that constable would not be entitled to an additional fee for service of a contempt warrant. Funchess, June 22, 1995, A.G. Op. #95-0356.

If a constable has no participation in the initial court action, but then serves a contempt warrant, he would be entitled to a fee pursuant to Section 25-7-27(1)(a). Funchess, June 22, 1995, A.G. Op. #95-0356.

If a constable does not have any participation in an initial court action and later serves process for a contempt charge, he would be entitled to a fee pursuant to Section 25-7-27(1)(a). Coleman, January 26, 1996, A.G. Op. #96-0011.

Under Section 25-7-27(1)(c) a constable is entitled to receive $.20 a mile for transporting a prisoner from the point he takes custody to the point of incarceration. This mileage fee is considered court costs and should be paid by the defendant upon conviction. West, April 12, 1996, A.G. Op. #96-0203.

Under Section 25-7-27, a constable is not entitled to receive an additional fee for arresting a subject on a contempt warrant if the constable is the officer that arrested the subject for the simple assault. Humphrey, July 19, 1996, A.G. Op. #96-0477.

Based on Sections 25-7-27(1)(e) and 19-19-7, a constable has a duty to attend both the criminal and civil cases in justice court in his district. However, a constable may be compensated with a per diem as provided under Section 25-3-69 when such constable serves as a bailiff in civil cases only. No similar provision exists that would provide compensation to the constable for serving as bailiff in a criminal case. Thompson, September 6, 1996, A.G. Op. #96-0606.

Based on Section 25-7-27, a constable is entitled to one fee for all process served in one case. If a constable serves warrants from three different cases, he is entitled to three separate fees. However, a constable is not entitled to an additional fee for serving a contempt warrant for failure to appear if he also served the warrant in the underlying case in which the defendant failed to appear. Humphrey, November 8, 1996, A.G. Op. #96-0762.

Constables may serve as bailiffs in civil cases in districts where they are not elected and receive compensation for such services. Humphrey, July 25, 1997, A.G. Op. #97-0427.

Where defendant is convicted in multiple cases, is allowed to pay fees over time, and the court order is silent concerning the matter, the defendant may specify how the fees should be credited, or, in the absence of such a specification, the clerk may use discretion in determining how the fees should be credited. Humphrey, July 25, 1997, A.G. Op. #97-0427.

Constables are entitled to receive service of process fees only if process is actually served, and are not entitled to such fees when unsuccessful attempts are made to serve the defendant, and the defendant's girlfriend subsequently comes to court and pays the necessary fine. Humphrey, Aug. 15, 1997, A.G. Op. #97-0501.

Subsection (1)(f) applies only to criminal cases in which the prosecution fails to secure a conviction; however, whether any amount is paid under the section is purely discretionary with the board. Carter, September 4, 1998, A.G. Op. #98-0536.

The clerk of the court collects the $25.00 fee for services in connection with the issuance of a peace bond as allowed by the statute; the clerk also collects $25.00 in order to pay a constable for service of the warrant as allowed by the statute, although the constable's fee is collected only after the court has conducted a hearing on the matter and determined, consistent with fact, that grounds exist for the issuance of a warrant. Vaughn, September 25, 1998, A.G. Op. #98-0588.

A written order from the court would be sufficient to appoint an individual to serve as justice court bailiff; however, there is no statute that would require the county board of supervisors to pay the individual who is serving as bailiff unless that person is a constable. Aldridge, December 18, 1998, A.G. Op. #98-0738.

A constable is not entitled to a fee for a diligent attempt to serve process if the constable is unable to serve the process even where the information provided to the constable is erroneous; if the plaintiff provides additional correct information for the process to be served and the constable successfully serves the process, an additional $15.00 should be collected from the plaintiff for the service of the process; the constable would then be entitled to $40.00 ($25.00 original fee plus $15.00 additional fee) for service of the process. Aldridge, May 26, 2000, A.G. Op. #2000-0219.

A constable may claim mileage for the actual mileage incurred when transporting a prisoner to the jail; the only mileage that may be claimed by the constable is the distance from the location of the arrest to the jail when the constable actually transports the prisoner to the jail, and a constable may not claim mileage if he "field releases" a prisoner and does not convey that prisoner to jail. Shirley, Apr. 13, 2001, A.G. Op. #01-0143.

A constable is not entitled to collect a fee unless the process is actually served; therefore, if a constable tries to serve a summons for unpaid taxes on a mobile home but the mobile home or trailer has been moved and the process cannot be served, the constable has not earned a fee. Young, Sept. 13, 2002, A.G. Op. #02-0531.

If a civil plaintiff supplies an address for a defendant that turns out to be incorrect, and the constable returns the process marked "not found" or "wrong address", the constable has not earned a fee. Young, Sept. 13, 2002, A.G. Op. #02-0531.

The 1999 amendment to subsection (1)(a) of this section supplements MS AG Op., Hairston (March 24, 1987) and MS AG Op., Gex (July 16, 1992) to provide that a constable may earn an additional $ 15.00 when a plaintiff provides erroneous information for service of process and the constable makes a diligent search but is unable to serve the process at the original address provided, but actually does serve the process at a correct address that is later provided by the plaintiff; the service of process fees (the original $ 25.00 fee plus the additional $ 15.00 fee) should only be paid to the constable upon a successful service of process by the constable. Young, Sept. 13, 2002, A.G. Op. #02-0531.

If a justice court judge issues a warrant to the county to pay a constable for service as a bailiff as provided for by Section 25-7-27(1)(e), the county is obligated to pay it. Erby, Nov. 1, 2002, A.G. Op. #02-0635.

If a justice court judge issues a warrant to the county to pay a constable for service as a bailiff as provided by subdivision (1)(e) of this section, the county is obligated to pay it. Erby, May 7, 2004, A.G. Op. 04-0169.

This section allows a constable to be paid by the county for serving as a bailiff in civil cases if the judge issues a pay warrant for such service. The judge should issue the warrant for the county to pay the constable for service as a bailiff. The warrant should be presented to the county to be put on the claims docket to be approved by the board of supervisors. The per diem set forth in § 25-3-69 is $ 40.00. Busby, July 23, 2004, A.G. Op. 04-0316.

If multiple charges in an arrest warrant are treated as one case, then the constable would be entitled to one fee for the execution thereof.. However, if the charges are treated as separate cases, then the constable would be entitled to a separate fee for each case even if he only served one warrant. Busby, July 23, 2004, A.G. Op. 04-0316.

A constable is entitled to his fees from the first proceeds received by the court on each case. If the court applies the payments to one case until it is fully paid prior to crediting payments toward the second case, the constable would not be entitled to receive his fee on the second case until all fees have been collected on the first case. However, a court has the authority to apply the payments received from the defendant toward both cases in equal amounts. In such a case, the constable would be entitled to receive his fees for both cases first. Busby, July 23, 2004, A.G. Op. 04-0316.

A constable is entitled to his fee if he serves process in a civil case filed by the county to collect a delinquent payment even if the defendant is unable to pay the delinquent bill. Busby, July 23, 2004, A.G. Op. 04-0316.

A constable is not entitled to receive an additional fee for arresting a subject on a contempt warrant if the constable is the officer that arrested the subject for the underlying offense. Busby, July 23, 2004, A.G. Op. 04-0316.

There is no provision that allows a constable to collect expenses associated with returning a defendant to jail after the constable previously arrested the defendant and released him on a recognizance bond. Busby, July 23, 2004, A.G. Op. 04-0316.

If a defendant fails to appear for his court date after being released on his own recognizance by the constable who arrested him, the court may issue a warrant for failure to appear. The constable may then arrest the defendant and bring him to the jail and he would then be entitled to a mileage reimbursement as established under § 25-3-41(2). Busby, July 23, 2004, A.G. Op. 04-0316.

In order to collect the annual state fail case fee the constable must serve or diligently attempt to serve all warrants and other process presented to him for service in state cases in which the state fails in the prosecution. He must attend all trials in state cases in which the state fails in the prosecution, unless lawfully excused or otherwise unavailable for a legitimate reason. Finally, he must not have overcharged in the collection of fees for costs. Enlow, Feb. 4, 2005, A.G. Op. 05-0004.

If the constable performs all the requirements for collection of the annual state fail case fee, the board of supervisors has no discretion, and must pay the fee. Enlow, Feb. 4, 2005, A.G. Op. 05-0004.

Since the annual state fail case fee is $ 1,800.00 or nothing, a breakdown or "itemization" is not required. Enlow, Feb. 4, 2005, A.G. Op. 05-0004.

A constable should receive his fee before restitution is paid to the victim. Aldridge, Apr. 26, 2005, A.G. Op. 05-0063.

Funds generated from assessment of traffic fines can be expended only for the DARE program or a similar program. Tolar, Apr. 14, 2006, A.G. Op. 06-0072.

§ 25-7-29. Notaries public. [Repealed effective July 1, 2021]

Notaries public may charge a fee in an amount of not less than Two Dollars ($2.00) nor more than Five Dollars ($5.00) for services rendered, including the performance of any of the following duties:

(a) Protesting bill or note for nonacceptance or nonpayment, and giving notice;
(b) Registering such protest and making record;
(c) Attesting letters of attorney and seal;
(d) Notarial affidavit to an account or other writing and seal;
(e) Each oath or affirmation and seal;
(f) Notarial procuration and seal;
(g) Certifying sales at auction and seal;
(h) Taking proof of debts to be sent abroad;
(i) Protest in insurance cases and seal;
(j) Copy of record and affidavit; or
(k) Absentee ballot applications and ballots.

HISTORY: Codes, 1880, § 451; 1892, § 2007; 1906, § 2183; Hemingway's 1917, § 1864; 1930, § 1794; 1942, § 3942; Laws, 1996, ch. 432, § 1; Laws, 1998, ch. 411, § 1, eff from and after July 1, 1998.

Editor's Note — Laws of 2020, ch. 382, § 34, effective July 1, 2021, provides:

"SECTION 34. Section 25-7-29, Mississippi Code of 1972, which authorizes notaries public to charge fees for certain services, is repealed.

§ 25-7-33. Officers taking acknowledgments.

OPINIONS OF THE ATTORNEY GENERAL

There is no requirement in Section 9-5-131 et seq., which would require a chancery clerk to post foreclosure notices and execute an affidavit stating that the same was posted, nor is there such requirement or authority in Sections 25-7-9, 25-7-11, and 89-1-53 et. seq., however, pursuant to Sections 25-7-33 and 25-7-45, if a clerk chooses to post such notices, he may assess a fee of $ .25 for executing an affidavit stating that the same was posted. Gex, Mar. 14, 2003, A.G. Op. #03-0112.

§ 25-7-45. All officers administering oaths.

OPINIONS OF THE ATTORNEY GENERAL

Fee for administering and certifying oath or affidavit should not be collected on civil cases. Simrall, Nov. 24, 1993, A.G. Op. #93-0710.

There is no requirement in Section 9-5-131 et seq., which would require a chancery clerk to post foreclosure notices and execute an affidavit stating that the same was posted, nor is there such requirement or authority in Sections 25-7-9, 25-7-11, and 89-1-53 et. seq., however, pursuant to Sections 25-7-33 and 25-7-45, if a clerk chooses to post such notices, he may assess a fee of $ .25 for executing an affidavit stating that the same was posted. Gex, Mar. 14, 2003, A.G. Op. #03-0112.

§ 25-7-47. Witness fees.

OPINIONS OF THE ATTORNEY GENERAL

Section 25-7-47 addresses witness fees which would be applicable to former police officers who no longer live in the county or district. Stark, June 6, 1995, A.G. Op. #95-0265.

§ 25-7-49. Law enforcement officers to receive no witness fees in criminal cases.

OPINIONS OF THE ATTORNEY GENERAL

Section 25-7-49 only applies to individuals who are currently serving as a law enforcement officer in the county or district. Thus, it does not apply to former police officers who have moved out of the county or district. Stark, June 6, 1995, A.G. Op. #95-0265.

§ 25-7-61. Jurors; Lengthy Trial Fund.

OPINIONS OF THE ATTORNEY GENERAL

Justice Court Judge may require convicted criminal defendant to pay court cost, i.e. jury cost, as set forth in statute. Jones, March 15, 1990, A.G. Op. #90-0180.

Any expenses incurred by members of a grand jury are covered by the fees paid pursuant to Section 25-7-61. Furthermore, no authority exists that would allow for a professional, such as a CPA or investigator, to provide assistance to a grand jury other than as a witness. Landrum, March 28, 1996, A.G. Op. #96-0173.

§ 25-7-63. Determination of compensation of jurors.

OPINIONS OF THE ATTORNEY GENERAL

Jury costs may be assessed against a defendant that is convicted; based on this section, jurors summoned for justice court jury duty are entitled to the per diem established by statute only if they are chosen for the jury or as alternates. Jurors are only entitled to the authorized per diem and not a per diem plus meals. Riley, June 6, 2003, A.G. Op. 03-0260.

CHAPTER 9.

STATEWIDE PERSONNEL SYSTEM

Personnel Administration System. 25-9-101
Veteran's Preference. 25-9-301

PERSONNEL ADMINISTRATION SYSTEM

Sec.

25-9-107. Definitions.

25-9-127. Prerequisites to dismissal or action adversely affecting compensation or employment status; exceptions; exemption of personnel actions of certain state agencies from State Personnel Board procedures for limited time period; operating state vehicle without license good cause grounds for dismissal; male state employees required to register with selective service.

§ 25-9-101. Purpose of chapter.

OPINIONS OF THE ATTORNEY GENERAL

The State Personnel Board statutes, Sections 25-9-101 et seq., supersede the conflicting provisions of Section 71-3-93, and the Workers' Compensation Commission may not establish and enforce its own rules and procedures that would conflict with State Personnel Board regulations for hiring, firing, appointment, promotion, demotion, and payment of personnel. Minor, April 7, 2000, A.G. Op. #2000-0177.

§ 25-9-107. Definitions.

The following terms, when used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(a) "Board" means the State Personnel Board created under the provisions of this chapter.

(b) "State service" means all employees of state departments, agencies and institutions as defined herein, except those officers and employees excluded by this chapter.

(c) "Nonstate service" means the following officers and employees excluded from the state service by this chapter. The following are excluded from the state service:

(i) Members of the State Legislature, their staff and other employees of the legislative branch;

(ii) The Governor and staff members of the immediate Office of the Governor;

(iii) Justices and judges of the judicial branch or members of appeals boards on a per diem basis;

(iv) The Lieutenant Governor, staff members of the immediate Office of the Lieutenant Governor and officers and employees directly appointed by the Lieutenant Governor;

(v) Officers and officials elected by popular vote and persons appointed to fill vacancies in elective offices;

(vi) Members of boards and commissioners appointed by the Governor, Lieutenant Governor or the State Legislature;

(vii) All academic officials, members of the teaching staffs and employees of the state institutions of higher learning, the Mississippi Community College Board, and community and junior colleges;

(viii) Officers and enlisted members of the National Guard of the state;

(ix) Prisoners, inmates, student or patient help working in or about institutions;

(x) Contract personnel; provided that any agency which employs state service employees may enter into contracts for personal and professional services only if such contracts are approved in compliance with the rules and regulations promulgated by the Public Procurement Review Board under Section 27-104-7. Before paying any warrant for such contractual services in excess of Seventy-five Thousand Dollars ($75,000.00), the Auditor of Public Accounts, or the successor to those duties, shall determine whether the contract involved was for personal or professional services, and, if so, was approved by the Public Procurement Review Board as required by law;

(xi) Part-time employees; provided, however, part-time employees shall only be hired into authorized employment positions classified by the board, shall meet minimum qualifications as set by the board, and shall be paid in accordance with the Variable Compensation Plan as certified by the board;

(xii) Persons appointed on an emergency basis for the duration of the emergency; the effective date of the emergency appointments shall not be earlier than the date approved by the State Personnel Director, and shall be limited to thirty (30) working days. Emergency appointments may be extended to sixty (60) working days by the State Personnel Board;

(xiii) Physicians, dentists, veterinarians, nurse practitioners and attorneys, while serving in their professional capacities in authorized employment positions who are required by statute to be licensed, registered or otherwise certified as such, provided that the State Personnel Director shall verify that the statutory qualifications are met prior to issuance of a payroll warrant by the Auditor;

(xiv) Personnel who are employed and paid from funds received from a federal grant program which has been approved by the Legislature or the Department of Finance and Administration whose length of employment has been determined to be time-limited in nature. This subparagraph shall apply to personnel employed under the provisions of the Comprehensive Employment and Training Act of 1973, as amended, and other special federal grant programs which are not a part of regular federally funded programs wherein appropriations and employment positions are appropriated by the Legislature. Such employees shall be paid in accordance with the Variable Compensation Plan and shall meet all qualifications required by federal statutes or by the Mississippi Classification Plan;

(xv) The administrative head who is in charge of any state department, agency, institution, board or commission, wherein the statute specifically authorizes the Governor, board, commission or other authority to appoint said administrative head; provided, however, that the salary of such administrative head shall be determined by the State Personnel Board in accordance with the Variable Compensation Plan unless otherwise fixed by statute;

(xvi) The State Personnel Board shall exclude top-level positions if the incumbents determine and publicly advocate substantive program policy and report directly to the agency head, or the incumbents are required to maintain a direct confidential working relationship with a key excluded official. Provided further, a written job classification shall be approved by the board for each such position, and positions so excluded shall be paid in conformity with the Variable Compensation Plan;

(xvii) Employees whose employment is solely in connection with an agency's contract to produce, store or transport goods, and whose compensation is derived therefrom;

(xviii) Repealed;

(xix) The associate director, deputy directors and bureau directors within the Department of Agriculture and Commerce;

(xx) Personnel employed by the Mississippi Industries for the Blind; provided that any agency may enter into contracts for the personal services of MIB employees without the prior approval of the State Personnel Board or the State Personal Service Contract Review Board; however, any agency contracting for the personal services of an MIB employee shall provide the MIB employee with not less than the entry-level compensation and benefits that the agency would provide to a full-time employee of the agency who performs the same services;

(xxi) Personnel employed by the Mississippi Department of Wildlife, Fisheries and Parks and the Mississippi Department of Marine Resources as law enforcement trainees (cadets); such personnel shall be paid in accordance with the Colonel Guy Groff State Variable Compensation Plan;

(xxii) Administrators and instructional employees under contract or employed by the Mississippi School of the Arts (MSA) established in Section 37-140-1 et seq.;

(xxiii) The President of the Mississippi Lottery Corporation and personnel employed by the Mississippi Lottery Corporation; and

(xxiv) Employees, excluding administrative employees, of the State Veterans Affairs Board who are employed at a veterans home established by the State Veterans Affairs Board under Section 35-1-19.

(d) "Agency" means any state board, commission, committee, council, department or unit thereof created by the Constitution or statutes if such board, commission, committee, council, department, unit or the head thereof, is authorized to appoint subordinate staff by the Constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof.

HISTORY: Laws, 1980, ch. 303, § 3; Laws, 1981, ch. 504, § 10; Laws, 1984, ch. 488, § 171; Laws, 1990, ch. 429, § 1; Laws, 1994, ch. 377, § 1; Laws, 1994 Ex Sess, ch. 26, § 18; Laws, 1996, ch. 343, § 1; Laws, 1997, ch. 609, § 4; Laws, 1998, ch. 574, § 5; Laws, 2003, ch. 517, § 1; Laws, 2009, ch. 363, § 1; Laws, 2014, ch. 397, § 4, eff

from and after July 1, 2014; Laws, 2018, 1st Ex Sess, ch. 2, § 48, eff from and after September 1, 2018; Laws, 2019, ch. 432, § 3, eff from and after July 1, 2019; Laws, 2021, ch. 302, § 1, eff from and after passage (approved January 28, 2021).

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, added (c)(xxii) and made a related change; and made minor stylistic changes.

The 2019 amendment added (c)(xxii) and redesignated former (c)(xxii) as (c)(xxiii).

The 2021 amendment, effective January 28, 2021, in (c)(x), substituted "Public Procurement Review Board" for "State Personal Service Contract Review Board" both times it appears, substituted "Section 27-104-7" for "Section 25-9-120(3)" in the first sentence, and in the last sentence, substituted "Seventy-five Thousand Dollars ($75,000.00)" for "One Hundred Thousand Dollars ($100,000.00)" and added "as required by law" at the end; and added (c)(xxiv).

Cross References — Mississippi Lottery Corporation, see § 27-115-7 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Mississippi Business Finance Corporation is a state agency, and one part-time employee and one full-time attorney, each of whom will be paid solely with MBFC funds, would be non state service employees. Harris, July 22, 1992, A.G. Op. #92-0524.

Miss. Code Section 25-9-107(c)(vii) provides that all academic officials, members of teaching staff and employees of state institutions of higher learning are non-state service and, therefore, are not subject to activities, rules and regulations of State Personnel Board. Cleere, Jan. 19, 1993, A.G. Op. #93-0019.

Section 25-3-97 refers to persons appointed to a position in state service or non-state service as defined in § 25-9-107. Ranck, August 14, 1998, A.G. Op. #98-0313.

In order to give meaning to the conflicting statutory provisions, the nursing board and the state personnel board have roles in setting the salary of the executive director. Since Section 73-15-17(m) is specific to the nursing board and Section 25-9-107(c) is a general statute, the nursing board sets the salary of its executive director within a salary range established by the state personnel board in accordance with the variable compensation plan. Owens, Aug. 11, 2006, A.G. Op. 06-0361.

The Board of Nursing sets the salary of its executive director within a salary range established by the State Personnel Board in accordance with the variable compensation plan. The Board may vote at any time to adjust the salary within the range established and amended by the Personnel Board. The Board does not have to vote to change the salary each time the range changes. Mabry, Nov. 10, 2006, A.G. Op. 06-0544.

§ 25-9-109. State Personnel Board members, terms of office, qualifications, vacancies.

OPINIONS OF THE ATTORNEY GENERAL

Based upon Section 25-9-115 [Repealed], the Department of Finance and Administration is only required to verify the existence of a funds shortage based upon the facts submitted by the agency and such independent findings as are reasonably practicable. Such verification would not require the Department of Finance and Administration to review or evaluate agency management decisions. Ranck, May 31, 1996, A.G. Op. #96-0352.

The State Personnel Board may not approve an educational benchmark award for a subordinate employee that will result in the employee receiving a total salary in excess of the agency head's salary as set in Section 25-3-33 [Repealed], but not in excess of the salary paid to the agency head as a result of the additional benchmark award provided in Section 25-3-34. Stringer, Jr., Sept. 7, 2001, A.G. Op. #01-0552.

§ 25-9-119. State personnel director; selection; qualifications; duties; funding of agency expenses; deposit of monies into State General Fund.

OPINIONS OF THE ATTORNEY GENERAL

This section does not contain language which would permit extensive work experience to substitute for the educational requirement. Thames, Apr. 2, 2004, A.G. Op. 04-0140.

§ 25-9-120. Contract personnel not state service or nonstate service employees of state; Personal Service Contract Review Board abolished; Public Procurement Review Board to be the Personal Service Contract Review Board.

OPINIONS OF THE ATTORNEY GENERAL

If professional engineering services and consultation relating to energy efficiency projects under § 31-7-14 do not involve the purchase of commodities, equipment, or furniture or the performance of construction, public advertisement and bids are not required; such contracts may come under the jurisdiction of the Personal Service Contract Review Board, pursuant to § 25-9-120. Williams, October 9, 1998, A.G. Op. #98-0631.

§ 25-9-127. Prerequisites to dismissal or action adversely affecting compensation or employment status; exceptions; exemption of personnel actions of certain state agencies from State Personnel Board procedures for limited time period; operating state vehicle without license good cause grounds for dismissal; male state employees required to register with selective service.

(1) No employee of any department, agency or institution who is included under this chapter or hereafter included under its authority, and who is subject to the rules and regulations prescribed by the state personnel system, may be dismissed or otherwise adversely affected as to compensation or employment status except for inefficiency or other good cause, and after written notice and hearing within the department, agency or institution as shall be specified in the rules and regulations of the State Personnel Board complying with due process of law; and any employee who has by written notice of dismissal or action adversely affecting his compensation or employment status shall, on hearing and on any appeal of any decision made in such action, be required to

furnish evidence that the reasons stated in the notice of dismissal or action adversely affecting his compensation or employment status are not true or are not sufficient grounds for the action taken; however, this provision shall not apply: (a) to persons separated from any department, agency or institution due to curtailment of funds or reduction in staff when such separation is in accordance with rules and regulations of the state personnel system; (b) during the probationary period of state service of twelve (12) months; and (c) to an executive officer of any state agency who serves at the will and pleasure of the Governor, board, commission or other appointing authority.

(2) The operation of a state-owned motor vehicle without a valid Mississippi driver's license by an employee of any department, agency or institution that is included under this chapter and that is subject to the rules and regulations of the state personnel system shall constitute good cause for dismissal of such person from employment.

(3) Beginning July 1, 1999, every male between the ages of eighteen (18) and twenty-six (26) who is required to register under the federal Military Selective Service Act, 50 USCS App. 453, and who is an employee of the state shall not be promoted to any higher position of employment with the state until he submits to the person, commission, board or agency by which he is employed satisfactory documentation of his compliance with the draft registration requirements of the Military Selective Service Act. The documentation shall include a signed affirmation under penalty of perjury that the male employee has complied with the requirements of the Military Selective Service Act.

(4) For a period of two (2) years beginning July 1, 2014, the provisions of subsection (1) shall not apply to the personnel actions of the State Department of Education that are subject to the rules and regulations of the State Personnel Board, and all employees of the department shall be classified as nonstate service during that period. However, any employee hired after July 1, 2014, by the department shall meet the criteria of the State Personnel Board as it presently exists for employment. The State Superintendent of Public Education and the State Board of Education shall consult with the Office of the Attorney General before taking personnel actions authorized by this section to review those actions for compliance with applicable state and federal law.

It is not the intention or effect of this section to include any school attendance officer in any exemption from coverage under the State Personnel Board policy or regulations, including, but not limited to, termination and conditions of employment.

(5)(a) For a period of two (2) years beginning July 1, 2015, the provisions of subsection (1) shall not apply to the personnel actions of the Department of Corrections, and all employees of the department shall be classified as nonstate service during that period. However, any employee hired after July 1, 2015, by the department shall meet the criteria of the State Personnel Board as it presently exists for employment.

(b) Additionally, for a period of one (1) year beginning July 1, 2016, the personnel actions of the Commissioner of the Department of Corrections shall be exempt from State Personnel Board rules, regulations and procedures in order to give the commissioner flexibility in making an orderly, effective and timely reorganization and realignment of the department.

(c) The Commissioner of Corrections shall consult with the Office of the Attorney General before personnel actions authorized by this section to review those actions for compliance with applicable state and federal law.

(6) Through July 1, 2020, the provisions of subsection (1) of this section shall not apply to the personnel actions of the Department of Human Services that are subject to the rules and regulations of the State Personnel Board, and all employees of the department shall be classified as nonstate service during that period. Any employee hired on or after July 1, 2020, by the department shall meet the criteria of the State Personnel Board as it presently exists for employment. The Executive Director of Human Services shall consult with the Office of the Attorney General before taking personnel actions authorized by this section to review those actions for compliance with applicable state and federal law.

(7) Through July 1, 2020, the provisions of subsection (1) of this section shall not apply to the personnel actions of the Department of Child Protection Services that are subject to the rules and regulations of the State Personnel Board, and all employees of the department shall be classified as nonstate service during that period. Any employee hired on or after July 1, 2020, by the division shall meet the criteria of the State Personnel Board as it presently exists for employment. The Commissioner of Child Protection Services shall consult with the Office of the Attorney General before taking personnel actions authorized by this section to review those actions for compliance with applicable state and federal law.

(8) Any state agency whose personnel actions are exempted in this section from the rules, regulations and procedures of the State Personnel Board shall file with the State Personnel Board, Lieutenant Governor, Speaker of the House of Representatives, Legislative Budget Office, Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER), and the members of the Senate and House Accountability, Efficiency and Transparency Committees an annual report no later than July 1 of each year while under the exemption. Such annual report shall contain the following information:

(a) The number of current employees who received an increase in salary during the past fiscal year and the amount of the increase;

(b) The number of employees who were dismissed from the agency or otherwise adversely affected as to compensation or employment status during the past fiscal year, including a description of such adverse effects;

(c) The number of new employees hired during the past fiscal year and the starting salaries of each new employee; and

(d) Quantifiable measures showing that the actions taken under authority of an exemption granted by this section have improved efficiency or effectiveness, or both, of the agency's operations.

HISTORY: Laws, 1980, ch. 303, § 9(1); Laws, 1994, ch. 523, § 2; Laws, 1999, ch. 411, § 2; Laws, 2014, ch. 491, § 1; Laws, 2015, ch. 437, § 1; Laws, 2016, ch. 494, § 5; Laws, 2016, ch. 495, § 1, eff from and after July 1, 2016; Laws, 2019, ch. 382,

§ 3, eff from and after July 1, 2019; Laws, 2021, ch. 381, § 1, eff from and after July 1, 2021.

Amendment Notes — The 2019 amendment substituted "July 1, 2020" for "July 1, 2019" twice in (6) and twice in (7); and made a minor stylistic change in (8).

The 2021 amendment, in (8), inserted "State Personnel Board" and "Legislative Budget Office, Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER)," and substituted "July 1 of each year while" for "July 1, 2016, and each year thereafter while" in the introductory paragraph, added (d), and made related changes; and made minor stylistic and punctuation changes.

§ 25-9-147. Variable compensation plan; annual review and report; designation of plan as "Colonel Guy Groff State Variable Compensation Plan."

Editor's Notes — Laws of 2019, ch. 481, §4, effective April 18, 2019, provides:

"SECTION 4. (1) It is the intent of the Legislature that the agencies listed in subsection (2) of this section shall have the authority to expend funds from any source that may become available to the agency in fiscal year 2020 in accordance with the rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds for the purpose of funding a pay increase, salary realignment and/or funding an adjustment to the Variable Compensation Plan to ensure that all full-time employees receive up to a three percent (3%) pay increase to the realignment component of the Variable Compensation Plan, excluding head of agencies, board members and commission members.

"(2) Based on data provided by the Legislative Budget Office, the State Personnel Board shall determine and publish the projected annual cost to fully fund all appropriated positions in compliance with the provisions of this act. The agencies listed are authorized to escalate other special funds for the limited purpose provided in this section in an amount not to exceed the following:

"AGENCY	AMOUNT
Architecture and Landscape, Board of	$ 1,263.00
Barber Examiners, Board of	$ 2,643.00
Cosmetology, Board of	$ 8,635.00
Engineers & Land Surveyors, Board of Prof.	$ 5,893.00
Gulfport, State Port Authority at	$ 97,373.00
Motor Vehicle Commission	$ 2,600.00
Nursing Home Administrators, Board of	$ 1,179.00
Nursing, Board of	$ 34,473.00
Pat Harrison Waterway District	$ 34,759.00
Pearl River Valley Water Mgmt. District	$111,784.00
Pharmacy, Board of	$ 48,474.00
Physical Therapy, Board of	$ 2,492.00
Public Accountancy, Board of	$ 19,495.00
Public Contractors, Board of	$ 19,187.00
Real Estate Appr. Licensing & Cert. Board of	$ 5,385.00
Real Estate Commission	$ 17,104.00
Social Workers Marriage/Family Therapists, Board of Examiners for	$ 1,913.00
Tombigbee River Valley Mgmt. Board	$ 20,611.00
Veteran's Home Purchase Board	$ 24,436.00
Yellow Creek State Inland Port	$ 18,602.00"

Laws of 2021, ch. 472, § 15, effective April 19, 2021, provides:

"SECTION 15. (1) It is the intent of the Legislature that the agencies listed in subsection (2) of this section shall have the authority to expend funds from any source that may become available to the agency in fiscal year 2022 in accordance with the rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds for the purpose of implementation and funding Project SEC2 of the Colonel Guy Groff State Variable Compensation Plan beginning January 1, 2022 and ending June 30, 2022. It shall be the agency's responsibility to make certain that each person, excluding executive directors, agency heads, and elected judges, shall receive no more than a three percent (3%) annual increase in salary which shall not exceed the market rate established by the State Personnel Board pursuant to the Colonel Guy Groff State Variable Compensation Plan for each classification.

(2) Based on data provided by the Legislative Budget Office, the State Personnel Board shall determine and publish the projected annual cost to fully fund all appropriated positions in compliance with the provisions of this section. The agencies listed are authorized to escalate other special funds for the limited purpose provided in this section in an amount not to exceed the following:

“AGENCY	AMOUNT
Architecture, Board of	$ 650.00
Barber Examiners, Board of	$ 1,232.00
Cosmetology, Board of	$ 4,942.00
Dental Examiners, Board of	$ 4,492.00
Engineers & Land Surveyors, Board of Prof.	$ 2,412.00
Medical Licensure Board	$ 18,233.00
Motor Vehicle Commission	$ 1,399.00
Nursing Home Administrators, Board of	$ 608.00
Nursing, Board of	$ 22,876.00
Pat Harrison Waterway District	$ 16,539.00
Pearl River Valley Water Supply District	$ 64,124.00
Pharmacy, Board of	$ 4,827.00
Physical Therapy, Board of	$ 677.00
Public Accountancy, Board of	$ 3,441.00
Public Contractors, Board of	$ 10,028.00
Real Estate Appr. Licensing & Cert., Board of	$ 1,794.00
Real Estate Commission	$ 9,298.00
Social Workers & Marriage/Family Therapists, Board of	$ 985.00
Veterans' Home Purchase Board	$ 13,470.00”

VETERAN'S PREFERENCE

Sec.
25-9-301. Definitions.

§ 25-9-301. Definitions.

The following terms shall have the meaning ascribed herein unless the context shall require otherwise:

(a) “Veteran” means a person who served in the active Armed Forces of the United States for a period of ninety (90) days during a period of war or armed conflict and was granted an honorable discharge therefrom; or was discharged therefrom for a service-connected injury in less than ninety (90) days.

(b) “Disabled veteran” means a veteran who the Veterans Administration has certified to have a service-connected disability rating of at least thirty percent (30%) within the last ninety (90) days, or a veteran who was awarded the Purple Heart for wounds received in combat.

HISTORY: Laws, 1980, ch. 346, § 1; Laws, 1991, ch. 476, § 1, eff from and after July 1, 1991; Laws, 2019, ch. 398, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment inserted "rating of at least thirty percent (30%)" and "or a veteran who was awarded the Purple Heart for wounds received in combat" in (b).

CHAPTER 11.

SOCIAL SECURITY AND PUBLIC EMPLOYEES' RETIREMENT AND DISABILITY BENEFITS

Article 3. Additional State Retirement and Disability Benefits. 25-11-101

ARTICLE 1.

SOCIAL SECURITY BENEFITS.

§ 25-11-11. Coverage of employees of political subdivisions and instrumentalities.

OPINIONS OF THE ATTORNEY GENERAL

The Marshall County Industrial Development Authority is a unit of county government, and an employee thereof may be entitled to state retirement and other benefits accorded to county employees. Smith, Nov. 18, 2005, A.G. Op. 05-0550.

§ 25-11-15. Administration and operation of Public Employees' Retirement System, federal-state agreement, and Articles 1 and 3.

OPINIONS OF THE ATTORNEY GENERAL

In the case of the election of the Board of Trustees of the Public Employees' Retirement System, the electorate should be limited to those employees who are members of the System, and should exclude those employees who are covered for Social Security purposes only. Walker, Nov. 20, 1991, A.G. Op. #91-0818.

Board of Trustees of the System may employ mathematical formula based on compensation paid to create presumption that employment contract for legal school term was completed in order to support finding that service for legal school term was rendered, absent any information to the contrary being reported by employer; awarding of creditable service on this basis is conditional and if, at later date, it is determined that underlying facts are not consistent with presumption, then service credit would be recalculated and awarded in accordance with the statutory schedule. Walker, Jan. 18, 1994, A.G. Op. #94-0020.

While specific employment and membership in retirement system is required for appointment or election of certain members of Board of Trustees of PERS, service on Board of Trustees is not part of duties of employment and employees may not be compensated for work as employees while performing duties as Board members; such employees would be required to take annual leave from their regular employment duties while performing duties of PERS trustees and being compensated therefor in accordance with section 25-11-15(10). Walker, March 23, 1994, A.G. Op. #93-0749.

The Board of Trustees of the Public Employees' Retirement System may further define "termination" as it specifically applies to employees of Circuit and Chancery Clerks. Ready, Oct. 31, 2003, A.G. Op. 03-0331.

ARTICLE 3.

ADDITIONAL STATE RETIREMENT AND DISABILITY BENEFITS.

Sec.
25-11-103. Definitions.

§ 25-11-103. Definitions.

(1) The following words and phrases as used in Articles 1 and 3, unless a different meaning is plainly required by the context, have the following meanings:

(a) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member and credited to his or her individual account in the annuity savings account, together with regular interest as provided in Section 25-11-123.

(b) "Actuarial cost" means the amount of funds presently required to provide future benefits as determined by the board based on applicable tables and formulas provided by the actuary.

(c) "Actuarial equivalent" means a benefit of equal value to the accumulated contributions, annuity or benefit, as the case may be, when computed upon the basis of such mortality tables as adopted by the board of trustees, and regular interest.

(d) "Actuarial tables" mean such tables of mortality and rates of interest as adopted by the board in accordance with the recommendation of the actuary.

(e) "Agency" means any governmental body employing persons in the state service.

(f) "Average compensation" means the average of the four (4) highest years of earned compensation reported for an employee in a fiscal or calendar year period, or combination thereof that do not overlap, or the last forty-eight (48) consecutive months of earned compensation reported for an employee. The four (4) years need not be successive or joined years of service. In computing the average compensation for retirement, disability or survivor benefits, any amount lawfully paid in a lump sum for personal leave or major medical leave shall be included in the calculation to the extent that the amount does not exceed an amount that is equal to thirty (30) days of earned compensation and to the extent that it does not cause the employee's earned compensation to exceed the maximum reportable amount specified in paragraph (k) of this section; however, this thirty-day limitation shall not prevent the inclusion in the calculation of leave earned under federal regulations before July 1, 1976, and frozen as of that date as referred to in Section 25-3-99. In computing the average compensation, no amounts shall be used that are in excess of the amount on which contributions were required and paid, and no nontaxable amounts paid by the employer for health or life insurance premiums for the employee shall be used. If any member who is or has been granted any increase in annual salary or compensation of more than eight percent (8%) retires within twenty-four (24) months from the date that the increase becomes effective, then the board shall exclude that part of the increase in salary or compensation that exceeds eight percent (8%) in calculating that member's average compensation for retirement purposes. The board may enforce this provision by rule or regulation. However, increases in compensation in excess of eight percent (8%) per year granted within twenty-four (24) months of the date of retirement may be included in the calculation of average compensation if satisfactory proof is presented to the board showing that the increase in compensation was the result of an actual change in the position held or services rendered, or that the compensation increase was authorized by the State Personnel Board or was increased as a result of statutory enactment, and the employer furnishes an affidavit stating that the increase granted within the last twenty-four (24) months was not contingent on a promise or agreement of the employee to retire. Nothing in Section 25-3-31 shall affect the calculation of the average compensation of any member for the purposes of this article. The average compensation of any member who retires before July 1, 1992, shall not exceed the annual salary of the Governor.

(g) "Beneficiary" means any person entitled to receive a retirement allowance, an annuity or other benefit as provided by Articles 1 and 3. The term "beneficiary" may also include an organization, estate, trust or entity; however, a beneficiary designated or entitled to receive monthly payments under an optional settlement based on life contingency or under a statutory monthly benefit may only be a natural person. In the event of the death before retirement of any member who became a member of the system before July 1, 2007, and whose spouse and/or children are not entitled to a retirement allowance on the basis that the member has less than four (4) years of membership service credit, or who became a member of the system on or after July 1, 2007, and whose spouse and/or children are not entitled to a retirement allowance on the basis that the member has less than eight (8) years of membership service credit, and/or has not been married for a minimum of one (1) year or the spouse has waived his or her entitlement to a retirement allowance under Section 25-11-114, the lawful spouse of a member at the time of the death of the member shall be the beneficiary of the member unless the member has designated another beneficiary after the date of marriage in writing, and filed that writing in the office of the executive director of the board of trustees. No designation or change of beneficiary shall be made in any other manner.

(h) "Board" means the board of trustees provided in Section 25-11-15 to administer the retirement system created under this article.

(i) "Creditable service" means "prior service," "retroactive service" and all lawfully credited unused leave not exceeding the accrual rates and limitations provided in Section 25-3-91 et seq., as of the date of withdrawal from service plus "membership service" and other service for which credit is allowable as provided in Section 25-11-109. Except to limit creditable service reported to the system for the purpose of computing an employee's retirement allowance or annuity or benefits provided in this article, nothing in this paragraph shall limit or otherwise restrict the power of the governing authority of a municipality or other political subdivision of the state to adopt such vacation and sick leave policies as it deems necessary.

(j) "Child" means either a natural child of the member, a child that has been made a child of the member by applicable court action before the death of the member, or a child under the permanent care of the member at the time of the latter's death, which permanent care status shall be determined by evidence satisfactory to the board. For purposes of this paragraph, a natural child of the member is a child of the member that is conceived before the death of the member.

(k) "Earned compensation" means the full amount earned during a fiscal year by an employee not to exceed the employee compensation limit set pursuant to Section 401(a)(17) of the Internal Revenue Code for the calendar year in which the fiscal year begins and proportionately for less than one (1) year of service. Except as otherwise provided in this paragraph, the value of maintenance furnished to an employee shall not be included in earned compensation. Earned compensation shall not include any amounts paid by the employer for health or life insurance premiums for an employee. Earned compensation shall be limited to the regular periodic compensation paid, exclusive of litigation fees, bond fees, performance-based incentive payments, and other similar extraordinary nonrecurring payments. In addition, any member in a covered position, as defined by Public Employees' Retirement System laws and regulations, who is also employed by another covered agency or political subdivision shall have the earnings of that additional employment reported to the Public Employees' Retirement System regardless of whether the additional employment is sufficient in itself to be a covered position. In addition, computation of earned compensation shall be governed by the following:

(i) In the case of constables, the net earnings from their office after deduction of expenses shall apply, except that in no case shall earned compensation be less than the total direct payments made by the state or governmental subdivisions to the official.

(ii) In the case of chancery or circuit clerks, the net earnings from their office after deduction of expenses shall apply as expressed in Section 25-11-123(f)(4).

(iii) In the case of members of the State Legislature, all remuneration or amounts paid, except mileage allowance, shall apply.

(iv) The amount by which an eligible employee's salary is reduced under a salary reduction agreement authorized under Section 25-17-5 shall be included as earned compensation under this paragraph, provided this inclusion does not conflict with federal law, including federal regulations and federal administrative interpretations under the federal law, pertaining to the Federal Insurance Contributions Act or to Internal Revenue Code Section 125 cafeteria plans.

(v) Compensation in addition to an employee's base salary that is paid to the employee under the vacation and sick leave policies of a municipality or other political subdivision of the state that employs him or her that exceeds the maximums authorized by Section 25-3-91 et seq. shall be excluded from the calculation of earned compensation under this article.

(vi) The maximum salary applicable for retirement purposes before July 1, 1992, shall be the salary of the Governor.

(vii) Nothing in Section 25-3-31 shall affect the determination of the earned compensation of any member for the purposes of this article.

(viii) The value of maintenance furnished to an employee before July 1, 2013, for which the proper amount of employer and employee contributions have been paid, shall be included in earned compensation. From and after July 1, 2013, the value of maintenance furnished to an employee shall be reported as earned compensation only if the proper amount of employer and employee contributions have been paid on the maintenance and the employee was receiving maintenance and having maintenance reported to the system as of June 30, 2013. The value of maintenance when not paid in money shall be fixed by the employing state agency, and, in case of doubt, by the board of trustees as defined in Section 25-11-15.

(ix) Except as otherwise provided in this paragraph, the value of any in-kind benefits provided by the employer shall not be included in earned compensation. As used in this subparagraph, "in-kind benefits" shall include, but not be limited to, group life insurance premiums, health or dental insurance premiums, nonpaid major medical and personal leave, employer contributions for social security and retirement, tuition reimbursement or educational funding, day care or transportation benefits.

(*l*) "Employee" means any person legally occupying a position in the state service, and shall include the employees of the retirement system created under this article.

(m) "Employer" means the State of Mississippi or any of its departments, agencies or subdivisions from which any employee receives his or her compensation.

(n) "Executive director" means the secretary to the board of trustees, as provided in Section 25-11-15(9), and the administrator of the Public Employees' Retirement System and all systems under the management of the board of trustees. Wherever the term "Executive Secretary of the Public Employees' Retirement System" or "executive secretary" appears in this article or in any other provision of law, it shall be construed to mean the Executive Director of the Public Employees' Retirement System.

(o) "Fiscal year" means the period beginning on July 1 of any year and ending on June 30 of the next succeeding year.

(p) "Medical board" means the board of physicians or any governmental or nongovernmental disability determination service designated by the board of trustees that is qualified to make disability determinations as provided for in Section 25-11-119.

(q) "Member" means any person included in the membership of the system as provided in Section 25-11-105. For purposes of Sections 25-11-103, 25-11-105, 25-11-109, 25-11-111, 25-11-113, 25-11-114, 25-11-115 and 25-11-117, if a member of the system withdrew from state service and received a refund of the amount of the accumulated contributions to the credit of the member in the annuity savings account before July 1, 2007, and the person reenters state service and becomes a member of the system again on or after July 1, 2007, and repays all or part of the amount received as a refund and interest in order to receive creditable service for service rendered before July 1, 2007, the member shall be considered to have become a member of the system on or after July 1, 2007, subject to the eight-year membership service requirement, as applicable in those sections. For purposes of Sections 25-11-103, 25-11-111, 25-11-114 and 25-11-115, if a member of the system withdrew from state service and received a refund of the amount of the accumulated contributions to the credit of the member in the annuity savings account before July 1, 2011, and the person reenters state service and becomes a member of the system again on or after July 1, 2011, and repays all or part of the amount received as a refund and interest in order to receive creditable service for service rendered before July 1, 2011, the member shall be considered to have become a member of the system on or after July 1, 2011.

(r) "Membership service" means service as an employee in a covered position rendered while a contributing member of the retirement system.

(s) "Position" means any office or any employment in the state service, or two (2) or more of them, the duties of which call for services to be rendered by one (1) person, including positions jointly employed by federal and state agencies administering federal and state funds. The employer shall determine upon initial employment and during the course of employment of an employee who does not meet the criteria for coverage in the Public Employees' Retirement System based on the position held, whether the employee is or becomes eligible for coverage in the Public Employees' Retirement System based upon any other employment in a covered agency or political subdivision. If or when the employee meets the eligibility criteria for coverage in the other position, then the employer must withhold contributions and report wages from the noncovered position in accordance with the provisions for reporting of earned compensation. Failure to deduct and report those contributions shall not relieve the employee or employer of liability thereof. The board shall adopt such rules and regulations as necessary to implement and enforce this provision.

(t) "Prior service" means:

(i) For persons who became members of the system before July 1, 2007, service rendered before February 1, 1953, for which credit is allowable under Sections 25-11-105 and 25-11-109, and which shall allow prior service for any person who is now or becomes a member of the Public Employees' Retirement System and who does contribute to the system for a minimum period of four (4) years.

(ii) For persons who became members of the system on or after July 1, 2007, service rendered before February 1, 1953, for which credit is allowable under Sections 25-11-105 and 25-11-109, and which shall allow prior service for any person who is now or becomes a member of the Public Employees' Retirement System and who does contribute to the system for a minimum period of eight (8) years.

(u) "Regular interest" means interest compounded annually at such a rate as determined by the board in accordance with Section 25-11-121.

(v) "Retirement allowance" means an annuity for life as provided in this article, payable each year in twelve (12) equal monthly installments beginning as of the date fixed by the board. The retirement allowance shall be calculated in accordance with Section 25-11-111. However, any spouse who received a spouse retirement benefit in accordance with Section 25-11-111(d) before March 31, 1971, and those benefits were terminated because of eligibility for a social security benefit, may again receive his or her spouse retirement benefit from and after making application with the board of trustees to reinstate the spouse retirement benefit.

(w) "Retroactive service" means service rendered after February 1, 1953, for which credit is allowable under Section 25-11-105(b) and Section 25-11-105(k).

(x) "System" means the Public Employees' Retirement System of Mississippi established and described in Section 25-11-101.

(y) "State" means the State of Mississippi or any political subdivision thereof or instrumentality of the state.

(z) "State service" means all offices and positions of trust or employment in the employ of the state, or any political subdivision or instrumentality of the state, that elect to participate as provided by Section 25-11-105(f), including the position of elected or fee officials of the counties and their deputies and employees performing public services or any department, independent agency, board or commission thereof, and also includes all offices and positions of trust or employment in the employ of joint state and federal agencies administering state and federal funds and service rendered by employees of the public schools. Effective July 1, 1973, all nonprofessional public school employees, such as bus drivers, janitors, maids, maintenance workers and cafeteria employees, shall have the option to become members in accordance with Section 25-11-105(b), and shall be eligible to receive credit for services before July 1, 1973, provided that the contributions and interest are paid by the employee in accordance with that section; in addition, the county or municipal separate school district may pay the employer contribution and pro rata share of interest of the retroactive service from available funds. "State service" shall not include the President of the Mississippi Lottery Corporation and personnel employed by the Mississippi Lottery Corporation. From and after July 1, 1998, retroactive service credit shall be purchased at the actuarial cost in accordance with Section 25-11-105(b).

(aa) "Withdrawal from service" or "termination from service" means complete severance of employment in the state service of any member by resignation, dismissal or discharge.

(bb) The masculine pronoun, wherever used, includes the feminine pronoun.

(2) For purposes of this article, the term "political subdivision" shall have the meaning ascribed to such term in Section 25-11-5 and shall also include public charter schools.

HISTORY: Codes, 1942, § 7446-12; Laws, 1952, ch. 299, § 12; Laws, 1958, ch. 547, § 1; Laws, 1960, ch. 453, § 1; Laws, 1968, ch. 578, § 1; Laws, 1971, ch. 478, § 1; Laws, 1973, ch. 450, § 5; Laws, 1977, ch. 450, § 2; Laws, 1980, ch. 481, § 1; Laws, 1984, ch. 307, § 6; Laws, 1984, ch. 496, § 1; Laws, 1985, ch. 504, § 1; Laws, 1986, ch. 513, § 7; brought forward without change, Laws, 1987, ch. 345, § 7; Laws, 1989, ch. 583, § 1; Laws, 1991, ch. 513, § 2; Laws, 1992, ch. 576, § 1; Laws, 1993, ch. 617, § 2; Laws, 1994, ch. 601, § 1; Laws, 1995, ch. 624, § 1; Laws, 1996, ch. 472, § 1; Laws, 1999, ch. 544, § 17; Laws, 2000, ch. 628, § 6; Laws, 2002, ch. 627, § 5; Laws, 2004, ch. 561, § 4; Laws, 2007, ch. 407, § 1; Laws, 2008, ch. 359, § 2; Laws, 2010, ch. 389, § 2; Laws, 2010, ch. 528, § 1; Laws, 2013, ch. 414, § 1; Laws, 2016, ch. 397, § 3; Laws, 2016, ch. 420, § 10, eff from and after July 1, 2016; Laws, 2018, 1st Ex Sess, ch. 2, § 49, eff from and after September 1, 2018.

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, added the next-to-last sentence of (1)(z); and made a minor stylistic change.

Cross References — Mississippi Lottery Corporation, see § 27-115-7 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Salaried individual employed as public defender by board of supervisors meets definition of employee and state service as set forth in statute, and therefore, county board of supervisors would be mandated to contribute to state retirement of individual. Moore, March 7, 1990, A.G. Op. #90-0154.

Municipalities may establish such vacation policies as they deem necessary, except that compensation and time reported to retirement system cannot exceed benefits afforded at state level for purposes of computing retirement benefits; any policy regarding work and vacation schedules of policemen must pass constitutional muster, including scrutiny under equal protection principles, and must not be inconsistent with other laws of the state. Jackson, Nov. 25, 1992, A.G. Op. #92-0890.

Miss. Code Section 25-11-103 limits membership in Public Employees' Retirement System to employees of state, its political subdivisions or instrumentalities; nonprofit corporation or organization which is not state agency, political subdivision or instrumentality thereof, but is private, nonprofit organization, and employees of such organization, would not be eligible for participation in retirement system under provisions of Miss. Code Sections 25-11-101 et seq. Stribling, Feb. 3, 1993, A.G. Op. #93-0024.

Reading Miss. Code Sections 25-11-103 and 25-11-109 in pari materia, any member of retirement system who terminated during year should be allowed to report no more than amount equal to maximum monthly amount of $10,416.66 (based on the maximum annual amount of $125,000) times number of months worked during fiscal year; thus, upon termination, if member has not been reported on maximum monthly amount for each month of service during fiscal year, then part or all of lump-sum payment for unused leave could be reported to the system up to allowable proportionate part of maximum for service performed during fiscal year. Walker, Feb. 24, 1993, A.G. Op. #93-0109.

Under Miss. Code Section 25-11-103, each of two or more employment positions with different reporting entities (employers) must meet standard for covered position in order for earnings of such position to be reported to retirement system. Mouger, Mar. 24, 1993, A.G. Op. #93-0196.

In order to participate in Public Employees' Retirement System (PERS), participating agency must meet definition of "employer" in Miss. Code § 25-11-103; further, employee of such employer must be in "state service" as defined in Miss. Code Section 25-11-103 in order to be eligible to participate in PERS; in addition, Miss. Code Section 25-11-103 defines "employee" as any person legally occupying position in state service, including employees of PERS; thus, foregoing definitions limit membership in PERS to employees of state, its political subdivisions or instrumentalities thereof. Walker, Mar. 24, 1993, A.G. Op. #93-0198.

Under Miss. Code Section 25-11-103, city may establish policy of paying employees, who terminate or retire, for unused sick leave; however, policy may only apply to leave earned after adoption of policy. Spires, Apr. 7, 1993, A.G. Op. #93-0193.

A conditional resignation, made contingent upon the school board agreeing to reemploy the teacher for the remainder of the school year, does not constitute a "withdrawal from service" under Section 25-11-103(aa). Caves, March 10, 1995, A.G. Op. #95-0099.

Under Sections 25-11-103 and 25-11-111, there must be a complete severance of employment in the state service by resignation, dismissal or discharge, prior to being eligible for the payment of service retirement benefits. Caves, March 10, 1995, A.G. Op. #95-0099.

Any unused leave for which payment is not received will be applied to creditable service in accordance with Section 25-11-103(i). Such authorization would be effective for payment of unused leave to the person designated by such employee for this purpose, or, in the absence of such designation, to the beneficiary of such employee, or to the estate, in the event of the death of the employee prior to retirement. See also Section 37-7-307(1). Walker, May 11, 1995, A.G. Op. #95-0319.

Under Section 25-11-103(i) if the service otherwise qualifies as creditable service under another specific statutory provision, such as prior service, military service, out-of-state public service, service while on professional leave, or such other service as may be legislatively authorized from time to time, then the PERS Board of Trustees may award creditable service for such service. Walker, August 8, 1995, A.G. Op. #95-0597.

Unused personal leave in excess of 30 days and any unused sick leave is counted as creditable service for purposes of the retirement system as provided in Section 25-11-103. Teel, July 31, 1995, A.G. Op. #95-0251.

Upon termination of employment, each school attendance officer's unused personal leave in excess of thirty days shall be counted as creditable service for the purposes of the retirement system. See Sections 25-11-103 and 25-11-109. Leggett, October 25, 1996, A.G. Op. #96-0505.

After compulsory school attendance officers were deemed to be state employees, any accrued leave in excess of 30 days could be transferred to the Public Employees' Retirement System as service credit, provided a valid leave policy had been adopted and that said policy was identical to the provisions of §§ 25-11-103 and 25-11-109. Ranck, August 18, 1998, A.G. Op. #98-0314.

Municipal governing authorities are authorized to adopt vacation and sick leave policies as they deem necessary and, therefore, a municipality may develop a schedule for accrual of vacation or sick leave which recognizes differences between those employees working 12 hour shifts and those working eight hour shifts. Twiford, III, Jan. 18, 2002, A.G. Op. #01-0776.

A municipality is not required by statute to provide personal leave or sick leave benefits to employees, however, if a municipality does provide personal leave and sick leave benefits, the municipality must comply with its own policies; further, those policies may not be in conflict with any state or federal statutes or regulations, including the Family and Medical Leave Act of 1993. Fortier, Sept. 6, 2002, A.G. Op. #02-0492.

Headstart teaching experience is not state service and cannot constitute membership service for which credit is allowed under the Public Employees' Retirement System. Lowery, Oct. 4, 2002, A.G. Op. #02-0540.

The salary established for a county attorney by § 25-3-9 comprises the "earned compensation" addressed in subsection (k) of this section. Compton, Mar. 31, 2003, A.G. Op. #03-0024.

With regard to the 2000 amendment of subsection (k) of this section, the new limitation on total earned compensation is effective from July 1, 2002, forward; therefore, the prior limitation was in effect until June 30, 2002, and total earned compensation for the 2002 calendar year was required to be prorated accordingly. McLeod, Apr. 10, 2003, A.G. Op. #03-0071.

With regard to the 2000 amendment of subsection (k) of this section, the pay period for Chancery and Circuit Clerks who held office on January 1, 2002, would begin on January 1, 2002; therefore, total earned compensation received by these clerks would be prorated for the calendar year and limited to $ 137,500.00 for purposes of the Retirement System. McLeod, Apr. 10, 2003, A.G. Op. #03-0071.

Due to the irregular manner in which fees are received and expenses are incurred by Chancery and Circuit Clerks, fees net of expenditures for the entire calendar year should be used as the basis for the prorated earned compensation. McLeod, Apr. 10, 2003, A.G. Op. #03-0071.

Where a teacher claimed that, due to errors on the part of the school district, or the retirement commission, she did not receive credit for retirement contributions in one of her years of service, and requested the school district to reimburse her for payments she had to make to the commission when she retired, because a period of six years has elapsed since her retirement, there was no obligation or right of the school district to pay the employee as any cause of action would be barred by the statute of limitations. Mayfield, Aug. 15, 2003, A.G. Op.#03-0252.

Community and junior colleges are not covered by the state's leave law, but retain the authority to adopt their own leave policies so long as provisions therein for retirement credit do not exceed the state law provisions. Ready, Oct. 31, 2003, A.G. Op. 03-0331.

Where there is authority for the employer to pay non-taxable life and health insurance premiums, the payment of such premiums is not to be used in the calculation of the 25% income limitation or in calculating the limited compensation under the half-time/half-pay option. Ross, Sept. 24, 2004, A.G. Op. 04-0400.

Where an employee has unused personal leave time at retirement, if a city's policy is substantially similar to the state law provisions, then the employee may be paid a lump sum payment for not more than 30 days personal leave as of the date of the termination of the employee's employment, i.e., the date of retirement. If the city's policies differ from state law, then the provisions of the city's policies should be followed. Langford, Jan. 15, 2005, A.G. Op. 04-0488.

A municipal governing authority has the power to establish sick leave policies which govern the amount of leave available to employees, the accrual of that leave, and the payment for leave that is not used upon a retirement or termination of an employee. Collins, Apr. 29, 2005, A.G. Op. 05-0209.

An individual serving as an elected mayor does not accrue personal or major medical leave. Phillips, Feb. 10, 2006, A.G. Op. 06-0022.

Municipalities may enact leave policies which recognize the differences in work schedules and duties of employees, and a policy which provides that essential municipal employees are to be granted additional leave for working during any time in which non-essential municipal employees are granted leave with pay would be a valid exercise of municipal power. Cowgill, May 19, 2006, A.G. Op. 06-0181.

The full amount of a member's earned compensation, as that term is defined in Section 25-11-103(k)(iii), excluding mileage, is taken into consideration when determining the amount earned by the reemployed retiree serving in the Legislature under Section 25-11-127(4)(b). Higgins, Jan. 24, 2019, A.G. Op. 19-0001.

§ 25-11-105. Membership.

OPINIONS OF THE ATTORNEY GENERAL

Regularly employed attorney for Wastewater Authority is eligible to be included in State Retirement Plan and should have been reported to Retirement System; although total amount of compensation paid to attorney, including sums paid for extraordinary activities, should be reported to Retirement System and appropriate contributions made thereon, amounts paid as reimbursement of expenses and documented as such would not be considered compensation and should not be reported to Retirement System. Ishee, July 29, 1992, A.G. Op. #92-0523.

Coroner fulfilling unexpired term of elected county coroner position would have been covered elected official and retirement contributions would have been due on compensation paid to him as employee by direct warrant on county treasury. McWilliams, August 12, 1992, A.G. Op. #92-0558.

County human resource agency created as instrumentality of county is "employer" and agency employees are employees in state service for purposes of participation in Public Employees' Retirement System. Jordan, Dec. 10, 1992, A.G. Op. #92-0933.

Miss. Code Sections 25-11-105 et seq. provides for coverage under Public Employees' Retirement System on county engineer who is paid regular salary (which may or may not be based on percentage of construction costs), so as to cover such county engineer's services for definite, protracted period of time; however, earnings of county engineer who is merely hired for particular job would not be covered under Public Employees' Retirement System. Davis, May 24, 1993, A.G. Op. #93-0241.

Where employee is clearly employee of county, as participating employer in Public Employees' Retirement System, and where they were employed in covered position as required to receive service credit, then employer is obligated to withhold employee contribution from compensation paid and to remit same with employer contribution to Retirement System; failure to make such payments, as required, does not relieve political subdivision of its obligation to see that such payments were made, nor employee from liability for that amount which should have been paid by employee. Barry Aug. 26, 1993, A.G. Op. #93-0427.

Individual with status of employee occupying position in state service, who also works one-half or more of the time required of full-time employees, would be eligible for membership in retirement system. Ranck, Jan. 10, 1994, A.G. Op. #93-0949.

The use of the actuarial cost of benefits to establish previous service credit is not authorized under Sections 25-11-105 and 25-11-123. However, these provisions authorize the Board of Trustees to determine the rate of interest that will be applied under section 25-11-105(k) and as part of the calculation to determine the adjusted employer's contribution rate under section 25-11-123(c)(1). Walker, April 5, 1995, A.G. Op. #95-0032.

Under section 25-11-105 membership service can only be awarded where an individual is a member of the retirement system at the time that the service is performed, the PERS Board of Trustees may not award membership service to an individual who was not eligible for membership in PERS at the time the service was performed. Walker, August 8, 1995, A.G. Op. #95-0597.

There is no provision in the law which would allow for a municipality to withhold the employer contributions to the system on behalf of an employee who is deemed a "probationary" employee under the municipality's personnel system. Kirk, Jan. 3, 2003, A.G. Op. #02-0756.

Where the joinder agreement for a town of indicates that when the town joined the Retirement System, it elected to exclude all elective positions from coverage, and subsequently the Joinder Agreement was amended to cover all elected officials except alderman, thus, the members of the Town Board are excluded from coverage and should not be reported. Scott, July 25, 2003, A.G. Op. 02-0738.

The positions of "municipal judge" and "municipal judge pro tempore" are different positions and would not fall within the "grandfather" provision of Section 25-11-105(a)(ii). Lawrence, Sept. 20, 2005, A.G. Op. 05-0420.

Coverage of attorneys who represent public entities covered in the Public Employees' Retirement System discussed. Patch, Oct. 7, 2005, A.G. Op. 05-0224.

§ 25-11-109. Creditable service.

OPINIONS OF THE ATTORNEY GENERAL

Municipal judges may be eligible for membership in the PERS system as municipal employees pursuant to the above statute. Taylor, Nov. 6, 1991, A.G. Op. #91-0734.

No state employee may be granted Retirement System credit for more than one day of creditable service for each calendar day, regardless of number of hours worked or number of positions held. Walker, Dec. 28, 1992, A.G. Op. #92-1004.

Reading Miss. Code Sections 25-11-103 and 25-11-109 in pari materia, any member of retirement system who terminated during year should be allowed to report no more than amount equal to maximum monthly amount of $10,416.66 (based on maximum annual amount of $125,000) times number of months worked during fiscal year; thus, upon termination, if member has not been reported on maximum monthly amount for each month of service during fiscal year, then part or all of lump-sum payment for unused leave could be reported to system up to allowable proportionate part of maximum for service performed during fiscal year. Walker, Feb. 24, 1993, A.G. Op. #93-0109.

Where legal school term is from August 15 through May 25 and employee terminates on January 31, employee would receive credit for months of August through January or total of 6 months, and would receive creditable service for one-half year in accordance with Miss. Code Section 25-11-109(2); this individual would receive credit for month of August based on being employed for fifteen days as required by statute. Walker, May 22, 1993, A.G. Op. #93-0350.

Where legal school term is from August 25 through June 2 and employee terminates effective May 31, employee would receive credit for months of September through May or nine months, and would receive three-quarters of year of creditable service in accordance with Miss. Code Section 25-11-109(2). Walker, May 22, 1993, A.G. Op. #93-0350.

Where nine-month school employee is unable to fulfill contract for legal school term, and is docked for one week's pay, but later signs summer school contract and works fifteen days in month of June, employee would receive credit for nine months for school term (working for three weeks during month would still entitle employee to credit for month), and then would receive credit for month during month of June for total of ten months; under Miss. Code Section 25-11-109(2), employee would receive credit for year for ten months service during fiscal year; in other words, employee will be entitled to one year of service credit where such employee has been employed and rendered service for full school term. Walker, May 22, 1993, A.G. Op. #93-0350.

Section 37-19-1(k) [repealed] governs teaching experience for pay purposes on incremental pay scale set out at Section 37-19-7 and 37-19-17 [repealed]; retirement credit is separate question and is governed by Section 25-11-109(2); where school employee does not render services for full, legal term, then 25-11-109(2) provides that credit for partial years of service may be acquired for retirement purposes in one-quarter year increments. Chaney Oct. 29, 1993, A.G. Op. #93-0798.

Determination of whether school employee rendered service for legal school term to extent necessary to qualify for year of service credit must be made by System based on information reported by employer consistent with underlying facts; if employment contract for legal school term has been terminated or abandoned prior to completion, or if services required under contract have not actually been performed, then school employee would not be entitled to creditable service of one year and creditable service would be calculated in accordance with schedule provided within section 25-11-109(2). Walker, Jan. 18, 1994, A.G. Op. #94-0020.

Board of Trustees of the System may employ mathematical formula based on compensation paid to create presumption that employment contract for legal school term was completed in order to support finding that service for legal school term was rendered, absent any information to the contrary being reported by employer; awarding of creditable service on this basis is conditional and if, at later date, it is determined that underlying facts are not consistent with presumption, then service credit would be recalculated and awarded in accordance with statutory schedule. Walker, Jan. 18, 1994, A.G. Op. #94-0020.

There appears to be no statutory provision which provides for the granting and accumulation of leave for elected officials, except for retirement purposes under section 25-11-109. Truly, March 10, 1995, A.G. Op. #95-0057.

Absent an express statutory provision otherwise, under Section 25-11-109(2) an individual serving as an appointed or elected official during a period in which no compensation was paid would not be eligible for creditable service in the Public Employees' Retirement System. Ready, September 20, 1996, A.G. Op. #96-0472.

Pursuant to Section 25-11-109(2), elected officials in the town of Itta Bena, who are not paid on a per diem basis, are covered under the Public Employees' Retirement System. Irving, October 24, 1996, A.G. Op. #96-0540.

School attendance officers, as covered employees, also are allowed to count unused sick leave toward creditable service for purposes of the retirement system pursuant to the provisions Sections 25-11-103 and 25-11-109. Leggett, October 25, 1996, A.G. Op. #96-0505.

Upon termination of employment, each school attendance officer's unused personal leave in excess of thirty days shall be counted as creditable service for the purposes of the retirement system. See Sections 25-11-103 and 25-11-109. Leggett, October 25, 1996, A.G. Op. #96-0505.

After compulsory school attendance officers were deemed to be state employees, any accrued leave in excess of 30 days could be transferred to the Public Employees' Retirement System as service credit, provided a valid leave policy had been adopted and that said policy was identical to the provisions of §§ 25-11-103 and 25-11-109. Ranck, August 18, 1998, A.G. Op. #98-0314.

Elected officials are not covered under a separate leave policy established for their employees. Ready, Feb. 16, 2001, A.G. Op. #2001-0046.

School board members are not eligible for coverage in the Public Employees' Retirement System. Patch, Oct. 7, 2005, A.G. Op. 05-0224.

§ 25-11-111. Superannuation retirement.

OPINIONS OF THE ATTORNEY GENERAL

While member of retirement system who retired prior to July 1, 1987 may himself be entitled to minimum benefit under law based on current selection of option, where subsequent election is made available to him on actuarial equivalent basis, such subsequent election would be subject to actuarial adjustment and would thereby reduce minimum benefits that might otherwise be payable under Section 25-11-115. Walker, June 9, 1993, A.G. Op. #93-0400.

Under Sections 25-11-103 and 25-11-111, there must be a complete severance of employment in the state service by resignation, dismissal or discharge, prior to being eligible for the payment of service retirement benefits. Caves, March 10, 1995, A.G. Op. #95-0099.

§ 25-11-113. Disability retirement.

JUDICIAL DECISIONS

ANALYSIS

1. Evidence.
4. Judicial review.

1. Evidence.

Applicant for Mississippi Public Employees' Retirement System disability benefits failed to provide sufficient evidence that the applicant was disabled because the applicant failed to show that the pain in the applicant's hands was the result of a work-related accident or traumatic event. While there was evidence that the applicant suffered from carpal tunnel syndrome, trigger finger, DeQuervain's disease, and atrial fibrillation, there was no evidence that any of these conditions were permanently disabling. Thompson v. Public Emples. Ret. Sys., 297 So. 3d 267, 2019 Miss. App. LEXIS 560 (Miss. Ct. App. 2019), cert. denied, 298 So. 3d 415, 2020 Miss. LEXIS 270 (Miss. 2020).

Claimant was not entitled to duty-related disability benefits from the Public Employees' Retirement System of Mississippi, when the claimant alleged to have been injured from an electrical shock while working as a teacher at a high school, because, given the conflicting medical evidence, there was insufficient objective medical evidence to support the claim that the claimant's medical condition prevented the claimant from performing the duties of a teacher. Ulrich v. Public Emples. Ret. Sys., 281 So. 3d 259, 2019 Miss. App. LEXIS 132 (Miss. Ct. App. 2019).

Denial of a correctional supervisor's disability benefits on the ground that he failed to provide sufficient evidence to support that he was disabled was supported by substantial evidence because one physician released the supervisor to return to work, and another physician also concluded that he was capable of returning to work; the supervisor was never deemed permanently disabled, and there was never a medical opinion that he was incapacitated from performing his duties. Bradley v. Public Employees' Ret. Sys. of Miss., 291 So. 3d 369, 2019 Miss. App. LEXIS 407 (Miss. Ct. App. 2019), cert. denied, — So. 3d —, 2020 Miss. LEXIS 182 (Miss. 2020), cert. denied, 290 So. 3d 1261, 2020 Miss. LEXIS 123 (Miss. 2020).

Public Employees' Retirement System's decision denying an employee's claim for disability benefits was supported by substantial evidence where the only tests conducted by any treating physician that could have explained her asserted pain were her lumbar and cervical spine MRIs, but the lumbar disc had improved. Stakelum v. Pub. Employees' Ret. Sys. of Miss., 298 So. 3d 1013, 2019 Miss. App. LEXIS 552 (Miss. Ct. App. 2019), cert. denied, — So. 3d —, 2020 Miss. LEXIS 295 (Miss. 2020), cert. denied, 299 So. 3d 793, 2020 Miss. LEXIS 313 (Miss. 2020).

Public Employees' Retirement System's decision that the employee's finger injury was not disabling was supported by substantial evidence where the finger contained no fractures, a physician believed most of her pain was neurogenic, and her doctor had assigned a permanent-partial-impairment rating of only one percent for the finger and zero percent for the employee as a whole. Stakelum v. Pub. Employees' Ret. Sys. of Miss., 298 So. 3d 1013, 2019 Miss. App. LEXIS 552 (Miss. Ct. App. 2019), cert. denied, — So. 3d —, 2020 Miss. LEXIS 295 (Miss. 2020), cert. denied, 299 So. 3d 793, 2020 Miss. LEXIS 313 (Miss. 2020).

Public Employees' Retirement System's decision denying an employee disability benefits sufficiently explained its reasoning for the denial where the decision pointed out that CT and MRI scans produced only minor diagnoses; the physical therapist believed the employee did not put forth effort in performing the functional capacity evaluation, a treating physician saw improvement in the employee's lumbar spine MRI and did not believe surgery was an option; and several physicians reported that her physical exams produced mostly normal results with only mild problems. Stakelum v. Pub. Employees' Ret. Sys. of Miss., 298 So. 3d 1013, 2019 Miss. App. LEXIS 552 (Miss. Ct. App. 2019), cert. denied, — So. 3d —, 2020 Miss. LEXIS 295 (Miss. 2020), cert. denied, 299 So. 3d 793, 2020 Miss. LEXIS 313 (Miss. 2020).

4. Judicial review.

Denial of a former state employee's request for payment of non-duty-related disability benefits was appropriate because substantial evidence showed that the employee's medical condition was not the direct cause of the employee's termination from state service as the evidence demonstrated that the employee's employment with the Mississippi Department of Human Services was terminated due to misconduct—specifically, allegations that the employee stole and/or solicited medications from clients and their families. Richardson v. Public Emples. Ret. Sys. of Miss., 290 So. 3d 1265, 2019 Miss. App. LEXIS 456 (Miss. Ct. App. 2019).

Circuit court's decision to affirm the Public Employees' Retirement System of Mississippi Board of Trustees was not arbitrary and capricious because neither one of the supervisor's treating physicians ever stated that he was disabled at the time of his resignation; medical records indicated that the supervisor suffered only a contusion and strain, not an acute injury. Bradley v. Public Employees' Ret. Sys. of Miss., 291 So. 3d 369, 2019 Miss. App. LEXIS 407 (Miss. Ct. App. 2019), cert. denied, — So. 3d —, 2020 Miss. LEXIS 182 (Miss. 2020), cert. denied, 290 So. 3d 1261, 2020 Miss. LEXIS 123 (Miss. 2020).

Decision of the Public Employees' Retirement System (PERS) denying the claimant's application for non-duty-related disability retirement benefits was not supported by substantial evidence; PERS acknowledged the two documents completed by the claimant's treating neurosurgeon documenting his determination that she was disabled, there was no evidence that contradicted this, and PERS cited no requirement or standard of care requiring additional notes to render a doctor's certificate credible. Lang v. Pub. Employees' Ret. Sys., 284 So. 3d 814, 2019 Miss. App. LEXIS 546 (Miss. Ct. App. 2019).

§ 25-11-114. Retirement allowance for death before retirement or death or disability in line of duty.

JUDICIAL DECISIONS

ANALYSIS

2. Causation.
3. Permanent disability.
5. Eligibility.
6. Judicial review.

2. Causation.

Denial by the Public Employees' Retirement System of Mississippi of a terminated police officer's request for duty-related disability benefits—when the officer suffered from post-traumatic stress disorder following the fatal shooting of a suspect—was appropriate because the accident or traumatic event that caused the disorder did not also cause a physical injury to the officer that occurred in the line of duty. Carver v. Public Emples. Ret. Sys. of Miss., 306 So. 3d 694, 2020 Miss. LEXIS 483 (Miss. 2020).

Claimant was not entitled to duty-related disability benefits from the Public Employees' Retirement System of Mississippi, when the claimant alleged to have been injured from an electrical shock while working as a teacher at a high school, because the claimant failed to prove that the claimant's disability was related to a traumatic event that occurred while teaching. Ulrich v. Public Emples. Ret. Sys., 281 So. 3d 259, 2019 Miss. App. LEXIS 132 (Miss. Ct. App. 2019).

Applicant for Mississippi Public Employees' Retirement System disability benefits failed to provide sufficient evidence that the applicant was disabled because the applicant failed to show that the pain in the applicant's hands was the result of a work-related accident or traumatic event. While there was evidence that the applicant suffered from carpal tunnel syndrome, trigger finger, DeQuervain's disease, and atrial fibrillation, there was no evidence that any of these conditions were permanently disabling. Thompson v. Public Emples. Ret. Sys., 297 So. 3d 267, 2019 Miss. App. LEXIS 560 (Miss. Ct. App. 2019), cert. denied, 298 So. 3d 415, 2020 Miss. LEXIS 270 (Miss. 2020).

3. Permanent disability.

Applicant for for Mississippi Public Employees' Retirement System disability benefits failed to prove that the applicant was disabled because, while there was evidence that the applicant suffered from carpal tunnel syndrome, trigger finger, DeQuervain's disease, and atrial fibrillation, there was no evidence that any of these conditions were permanently disabling as the evidence demonstrated that the applicant could have recovered if the applicant had elected to follow the advice of the applicant's physician. Thompson v. Public Emples. Ret. Sys., 297 So. 3d 267, 2019 Miss. App. LEXIS 560 (Miss. Ct. App. 2019), cert. denied, 298 So. 3d 415, 2020 Miss. LEXIS 270 (Miss. 2020).

5. Eligibility.

Public Employees' Retirement System (PERS) Board of Trustees did not err in denying the claim a deceased PERS member's sister because the member's husband was entitled to lifetime spousal survivor benefits, notwithstanding the fact he was convicted of aggravated driving under the influence in connection with the member's death; the husband did not willfully cause the member's death under the slayer statutes, and he had been married to the member for over one year. Hicks v. Public Employees' Ret. Sys. of Miss., 282 So. 3d 1204, 2019 Miss. App. LEXIS 479 (Miss. Ct. App. 2019).

Denial of a correctional supervisor's disability benefits on the ground that he failed to provide sufficient evidence to support that he was disabled was supported by substantial evidence because one physician released the supervisor to return to work, and another physician also concluded that he was capable of returning to work; the supervisor was never deemed permanently disabled, and there was never a medical opinion that he was incapacitated from performing his duties. Bradley v. Public Employees' Ret. Sys. of Miss., 291 So. 3d 369, 2019 Miss. App. LEXIS 407 (Miss. Ct. App. 2019), cert. denied, — So. 3d —, 2020 Miss. LEXIS 182 (Miss. 2020), cert. denied, 290 So. 3d 1261, 2020 Miss. LEXIS 123 (Miss. 2020).

6. Judicial review.

Neither the Public Employees' Retirement System nor the court has the authority to analyze the public policy of the State; they must comply with the governing statutes when determining how survivor benefits are paid. Hicks v. Public Employees' Ret. Sys. of Miss., 282 So. 3d 1204, 2019 Miss. App. LEXIS 479 (Miss. Ct. App. 2019).

Circuit court's decision to affirm the Public Employees' Retirement System of Mississippi Board of Trustees was not arbitrary and capricious because neither one of the supervisor's treating physicians ever stated that he was disabled at the time of his resignation; medical records indicated that the supervisor suffered only a contusion and strain, not an acute injury. Bradley v. Public Employees' Ret. Sys. of Miss., 291 So. 3d 369, 2019 Miss. App. LEXIS 407 (Miss. Ct. App. 2019), cert. denied, — So. 3d —, 2020 Miss. LEXIS 182 (Miss. 2020), cert. denied, 290 So. 3d 1261, 2020 Miss. LEXIS 123 (Miss. 2020).

OPINIONS OF THE ATTORNEY GENERAL

Member of Public Employee's Retirement System must prove that mental incapacity is direct, as opposed to indirect, result of accident or traumatic event in order to qualify for line of duty disability benefits. Walker, March 16, 1994, A.G. Op. #93-1017.

§ 25-11-115. Options.

OPINIONS OF THE ATTORNEY GENERAL

While member of retirement system who retired prior to July 1, 1987 may himself be entitled to minimum benefit under law based on current selection of option, where subsequent election is made available to him on actuarial equivalent basis, such subsequent election would be subject to actuarial adjustment and would thereby reduce minimum benefits that might otherwise be payable under Section 25-11-115. Walker, June 9, 1993, A.G. Op. #93-0400.

§ 25-11-117. Refund of contributions; distribution to retirement plan or account; repayment of refund.

JUDICIAL DECISIONS

1. In general.

Public Employees' Retirement System (PERS) Board of Trustees did not err in denying the claim a deceased PERS member's sister because the member's husband was entitled to lifetime spousal survivor benefits, notwithstanding the fact he was convicted of aggravated driving under the influence in connection with the member's death; the husband did not willfully cause the member's death under the slayer statutes, and he had been married to the member for over one year. Hicks v. Public Employees' Ret. Sys. of Miss., 282 So. 3d 1204, 2019 Miss. App. LEXIS 479 (Miss. Ct. App. 2019).

Mississippi Supreme Court has applied the same statutory principles of the "slayer statutes" where the property at issue was life insurance proceeds rather than an inheritance; the same principles would apply to Public Employees' Retirement System benefits for the strong public policy against allowing someone to profit from involvement in the death of another. Hicks v. Public Employees' Ret. Sys. of Miss., 282 So. 3d 1204, 2019 Miss. App. LEXIS 479 (Miss. Ct. App. 2019).

Neither the Public Employees' Retirement System nor the court has the authority to analyze the public policy of the State; they must comply with the governing statutes when determining how survivor benefits are paid. Hicks v. Public Employees' Ret. Sys. of Miss., 282 So. 3d 1204, 2019 Miss. App. LEXIS 479 (Miss. Ct. App. 2019).

§ 25-11-119. Administration of Article 3.

OPINIONS OF THE ATTORNEY GENERAL

Public Employees' Retirement System may not release names, addresses or contents of any individual member records without prior written consent of individual to whom record pertains. Walker, Sept. 2, 1992, A.G. Op. #92-0688.

§ 25-11-120. Hearings and appeals for persons aggrieved by administrative determination relating to eligibility, payment of benefits or calculation of creditable service.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
4. New evidence.
6. Evidence in the record.

1. In general.

Circuit court's decision to affirm the Public Employees' Retirement System of Mississippi Board of Trustees was not arbitrary and capricious because neither one of the supervisor's treating physicians ever stated that he was disabled at the time of his resignation; medical records indicated that the supervisor suffered only a contusion and strain, not an acute injury. Bradley v. Public Employees' Ret. Sys. of Miss., 291 So. 3d 369, 2019 Miss. App. LEXIS 407 (Miss. Ct. App. 2019), cert. denied, — So. 3d —, 2020 Miss. LEXIS 182 (Miss. 2020), cert. denied, 290 So. 3d 1261, 2020 Miss. LEXIS 123 (Miss. 2020).

4. New evidence.

Public Employees' Retirement System of Mississippi Board of Trustees did not violate a former state employee's due process rights to a fair hearing by not obtaining additional medical records because the employee could not claim the employee's due process rights were violated by the employee's own failure to present a full set of medical records. Furthermore, the Board determined that sufficient evidence had been presented and that no additional evidence was needed to reach its decision to deny disability benefits. Richardson v. Public Emples. Ret. Sys. of Miss., 290 So. 3d 1265, 2019 Miss. App. LEXIS 456 (Miss. Ct. App. 2019).

6. Evidence in the record.

Circuit court did not err in not considering the SSA's finding that she was entitled to disability benefits as that decision came almost a year after the Public Employees' Retirement System's decision, and thus, the SSA decision was not contained in the record. Stakelum v. Pub. Employees' Ret. Sys. of Miss., 298 So. 3d 1013, 2019 Miss. App. LEXIS 552 (Miss. Ct. App. 2019), cert. denied, — So. 3d —, 2020 Miss. LEXIS 295 (Miss. 2020), cert. denied, 299 So. 3d 793, 2020 Miss. LEXIS 313 (Miss. 2020).

§ 25-11-121. Investments.

Editor's Notes — The Israel Support Act of 2019 (Sections 27-117-1 through 27-117-15) prohibits the Public Employees' Retirement System and the State Treasurer from investing funds with a company that is identified as engaging in a boycott of Israel.

OPINIONS OF THE ATTORNEY GENERAL

Five percent limitation on pooled or commingled funds is applicable to total Public Employees' Retirement System funds that may be invested in certain investment vehicles, but would not apply to investment vehicles selected by participant for investment of compensation deferred under Deferred Compensation Program, where statute provides that funds of deferred compensation program may be invested in any investments authorized for purchase by PERS. Walker, July 30, 1992, A.G. Op. #92-0577.

Public Employees' Retirement System is authorized to invest in pooled or commingled funds and mutual funds up to five percent of total book value of all investments of System; shares or evidence of ownership of shares or interest in such investment must be in name of System. Walker, Dec. 18, 1992, A.G. Op. #92-0987.

§ 25-11-123. Crediting of assets; financing.

OPINIONS OF THE ATTORNEY GENERAL

The use of the actuarial cost of benefits to establish previous service credit is not authorized under Sections 25-11-105 and 25-11-123. However, these provisions authorize the Board of Trustees to determine the rate of interest that will be applied under section 25-11-105(k) and as part of the calculation to determine the adjusted employer's contribution rate under section 25-11-123(c)(1). Walker, April 5, 1995, A.G. Op. #95-0032.

Constables are considered self-employed for the fee portion of their earnings and must pay the employer and employee contributions on such earnings. The county is responsible for matching contributions for direct payments made by the board to a constable, for example, fail case monies or payment for services rendered as a baliff in a civil proceeding. The county is not obligated to pay matching contributions for such fees as those earned in serving process. Moore, May 14, 2004, A.G. Op. 03-0315.

§ 25-11-127. Benefits upon reemployment of retired persons.

OPINIONS OF THE ATTORNEY GENERAL

Certificated employee may retire from employment in the middle of the school year, begin to receive retirement benefits, and, upon proper notice to the Retirement System, be rehired pursuant to new contract, provided the period of hire does not exceed 120 days or one-half of the normal working days for the position. Bailey, Jan. 7, 1992, A.G. Op. #91-0959.

If a teacher is employed in full time service with the intent of teaching the full year, then he or she is not eligible for retirement allowance while in such covered full time employment, and any modification of contractual arrangement to enable a member or retiree to draw such benefits if there is no termination of employment could amount to collusion to commit a fraud on the Retirement System. Bailey, Jan. 7, 1992, A.G. Op. #91-0959.

City may not pay the health insurance premium for an alderman who is a retired school teacher participating in a school health insurance program and who has waived his salary and compensation from the city in order to receive retirement benefits from the public employees retirement system. Newsom, Jan. 8, 1992, A.G. Op. #91-0970.

City may not pay health insurance premium for alderman who has waived all salary and compensation in order to receive retirement benefits from public employees retirement system, but city may, if it so elects, pay premiums for alderman after alderman has reimbursed city in advance. Moore, Sept. 24, 1992, A.G. Op. #92-0720.

Miss. Code Section 25-11-127 specifically addresses reemployment of retired member of Public Employees' Retirement System (PERS), and conditions and limitations thereof; in addition, initial eligibility for participation in Optional Retirement Plan (ORP), as well as any eligibility for participation in ORP after retirement thereunder, is based on eligibility for participation in PERS; if member may not be employed in state service while drawing retirement allowance from PERS (or its alternative Plan), then upon being reemployed in teaching or administrative faculty position with state institutions of higher learning and which position is covered by PERS (and thereby eligible for coverage in the ORP), retirement allowance must cease; if retirement benefit is not terminated, employee may only be employed for such period of time as is allowed under the provisions of Miss. Code Section 25-11-127. Walker, Mar. 24, 1993, A.G. Op. #93-0197.

Section 25-11-127 prohibits a person from receiving both retirement benefits from PERS and compensation for any service in covered state service. McDowell, March 24, 1995, A.G. Op. #95-0151.

An individual who elects to retire and is re-employed under the limited conditions allowed by 25-11-127 does not relinquish his or her status as a retiree for purposes of the retirement statutes or the state insurance statutes. Such a retiree would continue to receive retirement benefits and would be responsible for payment of his or her insurance premiums in accord with section 25-15-261(4) [now repealed]. Shelton, March 15, 1996, A.G. Op. #96-0133.

Pursuant Section 25-11-127, the Board of Trustees of the Public Employees Retirement System possesses the authority to adopt rules and regulations that would clarify what is required for a lawful withdrawal from service, in order to effectuate a retirement benefit prior to subsequent reemployment by the same or another covered agency. Ready, August 19, 1996, A.G. Op. #96-0563.

Under Section 25-11-127, an elected official in the Town of Itta Bena may not receive retirement benefits and serve in office with pay. In order to receive retirement benefits, the official would annually have to file a written statement in the office of his employer and in the office of the Executive Director of the Public Employees Retirement System of his intent to waive all salary or compensation, and elect to receive in lieu thereof, a retirement allowance as provided under the laws governing the Public Employees Retirement System. Irving, October 24, 1996, A.G. Op. #96-0540.

"Per diem", in connection with compensation, wages or salary, means "pay for a day's service", and Miss. Code Section 25-3-69 provides a uniform per diem rate of $40.00 per day for authorized state officers and employees. Criss, July 11, 1997, A.G. Op. #97-0357.

Any per diem, office expense allowance, mileage or travel expenses for councilmen drawing Mississippi State Retirement must be issued pursuant to a specific state statute authorizing such payments, and municipalities may not enact independent ordinances on this subject. Criss, July 11, 1997, A.G. Op. #97-0357.

An attorney who contracts with a board of supervisors to represent the board on an annual basis may not receive retirement benefits during the term of the contract. Shaw, Aug. 1, 1997, A.G. Op. #97-0449.

City councilmen may not receive a per diem allowance from the city in addition to receiving retirement benefits. Gregory, Nov. 21, 1997, A.G. Op. #97-0727.

A county circuit clerk could receive benefits from the Public Employees Retirement System and could continue to serve as such elected official provided she waived all salary or compensation in the manner required by this section, and could, only to the extent permitted by statute, receive per diem, office expense allowance, mileage or travel expense. Chamberlin, August 27, 1999, A.G. Op. #99-0443.

A city or county can pay health insurance premiums on retirees who elect to return to work and receive compensation, and such insurance is not "compensation." Ready, June 7, 2002, A.G. Op. #02-0328.

As a retiree continuing in office, the wages of a county judge can not be more than 25% of his final average compensation paid on a prorated basis as earned, that is, each month the retiree would be entitled to receive 1/12th of the 25% of final average compensation. Webster, Sept. 20, 2002, A.G. Op. #02-0455.

A state retiree who is elected to a municipal or county office, after making the required filings, is authorized to receive compensation for serving in that elective office an amount not to exceed twenty-five of said retiree's average compensation, to be paid on a pro-rata basis. Clay, Dec. 6, 2002, A.G. Op. #02-0688.

Retirees elected to local office must waive their salary or compensation, except for statutorily authorized per diem and expenses, in order to continue in office and receive their retirement benefits. Davis, Feb. 10, 2003, A.G. Op. #03-0080.

Even if the position of warden for a correctional facility is classified as a contract position, an individual would not be able to draw a retirement benefit while employed as the warden. Palmer, July 25, 2003, A.G. Op. 03-0240.

Employees covered by the State and School Employees Health Insurance Plan who elect to retire and are re-employed under the limited conditions allowed by this section do not relinquish their status of "retiree" for the purposes of the retirement statutes or the state insurance statutes. Therefore, the state cannot pay the insurance premiums for retirees who are covered under the Plan who return to work under the limited conditions allowed by this section. Hill, Nov. 7, 2003, A.G. Op. 03-0591.

Where there is authority for the employer to pay non-taxable life and health insurance premiums, the payment of such premiums is not to be used in the calculation of the 25% income limitation or in calculating the limited compensation under the half-time/half-pay option. Ross, Sept. 24, 2004, A.G. Op. 04-0400.

The salary of a family member would not count as part of the twenty-five percent compensation of a retired circuit or chancery clerk. McLeod, Mar. 11, 2005, A.G. Op. 05-0056.

If they satisfy the conditions imposed by Miss. Code Ann. § 25-11-127(1) and (4), retired PERS members have vested rights to their benefits, are entitled to receive their benefits and, if qualified and elected, have a right to serve as a representative or senator in the Mississippi Legislature without forfeiture of their PERS retirement benefits. Norwood, Nov. 29, 2018, A.G. Op. 18-0408.

While Miss. Code Ann. § 25-11-127 requires that a person be retired and not employed by the state for a period of ninety days in order to be reemployed and continue to receive retirement benefits, other conditions must also be considered by PERS on a case-by-case basis, including whether a prior period of retirement should be credited under certain circumstance, or whether, due to a PERS member's age or length of service, application of the 90-day requirement violates any fundamental rights held by the member or contractual rights existing under prior law. Higgins, Jan. 24, 2019, A.G. Op. 19-0001.

All sums paid to legislators under Miss. Code Ann. § 5-1-41, with the exception of mileage, are considered salary for the purposes of Miss. Code Ann. § 25-11-127(4)(a). Higgins, Jan. 24, 2019, A.G. Op. 19-0001.

The full amount of a member's earned compensation, as that term is defined in Section 25-11-103(k)(iii), excluding mileage, is taken into consideration when determining the amount earned by the reemployed retiree serving in the Legislature under Section 25-11-127(4)(b). Higgins, Jan. 24, 2019, A.G. Op. 19-0001.

A retiree who is serving in the Legislature may receive their retirement benefit if they meet the requirements of Section 25-11-127(1) and 25-11-127(4)(a) or (b). Higgins, Jan. 24, 2019, A.G. Op. 19-0001.

Retirees who are receiving a retirement allowance from both PERS and SLRP (Supplemental Legislative Retirement Plan, Miss. Code Ann. § 25-11-301 et seq.) may continue to receive the allowance from SLRP upon returning to elective office in the Legislature. Section 25-11-309 provides the circumstances, amounts, and limitations by which a retired legislator can receive a benefit from SLRP and does not prohibit receipt of a benefit as a reemployed retiree. Higgins, Jan. 24, 2019, A.G. Op. 19-0001.

Under Miss. Code Ann. §§ 25-11-127(5) (PERS) and 25-11-307(2) (SLRP), employers of persons who are receiving retirement allowances and who are employed in service covered by Miss. Code Ann. § 25-11-127(4) must make employer contributions under both PERS and SLRP. Higgins, Jan. 24, 2019, A.G. Op. 19-0001.

§ 25-11-137. Transfer of law enforcement officers' or firemen's funds.

OPINIONS OF THE ATTORNEY GENERAL

A law enforcement officer or fireman can transfer time served from a jurisdiction which was not participating in a disability and retirement fund so long as full payment for the time is made to the system of the jurisdiction accepting the employee. Landers, Dec. 17, 1997, A.G. Op. #97-0769.

ARTICLE 7.

SUPPLEMENTAL LEGISLATIVE RETIREMENT PLAN.

§ 25-11-301. Creation and management of supplemental legislative retirement plan.

OPINIONS OF THE ATTORNEY GENERAL

A member of the Legislature may retire from the Legislature and receive a benefit from the Supplemental Legislative Retirement Plan (SLRP) and at the same time accept a covered position in the Public Employees' Retirement System (PERS), thereby continuing to be reported to PERS in the PERS covered position while drawing a benefit from the SLRP position. Ready, Feb. 25, 2000, A.G. Op. #2000-0075.

§ 25-11-307. Custodian of fund; financing; expense.

OPINIONS OF THE ATTORNEY GENERAL

The Public Employees' Retirement System is required by subsection (1) to administer the Supplemental Legislative Retirement Plan as a retirement plan separate and distinct from other plans administered by the system. Ready, Feb. 25, 2000, A.G. Op. #2000-0075.

Under Miss. Code Ann. §§ 25-11-127(5) (PERS) and 25-11-307(2) (SLRP), employers of persons who are receiving retirement allowances and who are employed in service covered by Miss. Code Ann. § 25-11-127(4) must make employer contributions under both PERS and SLRP. Higgins, Jan. 24, 2019, A.G. Op. 19-0001.

§ 25-11-309. Retirement allowance under plan; waiver of benefits.

OPINIONS OF THE ATTORNEY GENERAL

Retirees who are receiving a retirement allowance from both PERS (Public Employees' Retirement System, Miss. Code Ann. § 25-11-101 et seq.) and SLRP may continue to receive the allowance from SLRP upon returning to elective office in the Legislature. This section provides the circumstances, amounts, and limitations by which a retired legislator can receive a benefit from SLRP and does not prohibit receipt of a benefit as a reemployed retiree. Higgins, Jan. 24, 2019, A.G. Op. 19-0001.

ARTICLE 11.

OPTIONAL RETIREMENT PROGRAM FOR EMPLOYEES OF STATE INSTITUTIONS OF HIGHER LEARNING.

§ 25-11-401. Eligibility for optional program.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 25-11-401 provides, in part, that optional retirement program is established for employees of state institutions of higher learning who are appointed or employed after July 1, 1990; it further states that to be eligible to participate in optional retirement program, newly appointed employee must hold teaching or administrative faculty position, and must be eligible for membership in Public Employees' Retirement System of Mississippi. Walker, Mar. 24, 1993, A.G. Op. #93-0197.

CHAPTER 13.

HIGHWAY SAFETY PATROL RETIREMENT SYSTEM

§ 25-13-11. Retirement allowance; superannuation retirement; annual increase; minimum retirement allowances; waiver of benefits.

OPINIONS OF THE ATTORNEY GENERAL

Limitation in statute on retirement benefits applies prospectively to new members and to active members whose creditable service as of July 1, 1986 made them eligible for service retirement benefit not exceeding 85% of average compensation; for active members whose creditable service as of July 1, 1986 made them eligible for service retirement benefit in excess of 85% of average compensation, amendment limits aggregate benefit payable to such members for service retirement to percentage calculated on basis of actual creditable service accrued as of effective date of amendment. Head, March 16, 1994, A.G. Op. #94-0043.

The mandatory retirement of highway safety patrol members under Miss. Code Section 25-13-11(f) at age sixty may be enforced without violating the Age Discrimination in Employment Act provisions relating to firefighters and law enforcement personnel (29 U.S.C.S. § 5623(j)). Head, Aug. 15, 1997, A.G. Op. #97-0514.

§ 25-13-12. Additional benefit payments.

OPINIONS OF THE ATTORNEY GENERAL

Board referred to in Section 25-13-12(2) is Board of Trustees of Public Employees Retirement System. Head Nov. 3, 1993, A.G. Op. #93-0782.

An increase in benefits under the 1989 amendment to this section can not be paid retroactively but are to be paid only from the date of the application for such an increase. Jenkins, January 8, 1999, A.G. Op. #98-0727.

The term "children of an active member" includes natural children and adopted children, including adopted stepchildren, but does not include a stepchild who had not been legally adopted. Jenkins, January 8, 1999, A.G. Op. #98-0727.

The spouse and/or the dependent children of an active member killed in the line of duty qualifies for a retirement allowance but not before receipt of application by the board; further, each child until he reaches 19 years is entitled to retirement benefits upon application of the widow. Jenkins, January 8, 1999, A.G. Op. #98-0727.

The calculation of average compensation should be based on the law in effect at the time that the beneficiary applied for benefits and thereby qualified for benefits. Jenkins, January 8, 1999, A.G. Op. #98-0727.

§ 25-13-13. Death benefits.

OPINIONS OF THE ATTORNEY GENERAL

Upon application and approval by the board, the spouse of a highway patrolman killed in the line of duty in 1981 is entitled to the increased retirement allowance provided for by the amendment of this section in 1989 if she has not remarried. Jenkins, Aug. 1, 1997, A.G. Op. #97-0466.

§ 25-13-29. Actuarial valuation.

OPINIONS OF THE ATTORNEY GENERAL

No specific authority can be found in Mississippi Code to allow Board of Trustees of county owned community hospital to pay retroactive raises to hospital employees; such employees are public servants within meaning of Mississippi Constitution and are therefore prohibited from receiving retroactive pay raises. Genin, Feb. 7, 1990, A.G. Op. #90-0060.

CHAPTER 14.

GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLAN LAW

§ 25-14-1. Title.

OPINIONS OF THE ATTORNEY GENERAL

Upon the sale or lease of its community hospital, the board of supervisors of a county could assume the duties of sponsor of the deferred compensation plan now offered by the hospital. Griffith, March 30, 2000, A.G. Op. #2000-0170.

Section 41-13-35 (5)(b) provides the Hospital System the ability to adopt and administer an ineligible 457(f) plan. This opinion does not contradict earlier opinions nor supersede them in that they relate to the eligible 457(b) plan as provided for in §§ 25-14-1 et seq. Williams, May 14, 2004, A.G. Op. 03-0660.

Payroll deductions for Sam's Club memberships for municipal employees are not authorized. Barry, Jan. 14, 2005, A.G. Op. 05-0007.

The deferred compensation program authorized under Sections 25-14-1 et seq.

does not authorize employer contributions to the deferred compensation program administered by the Public Employees's Retirement System. Robertson, June 26, 2006, A.G. Op. 06-0241.

§ 25-14-3. Definitions.

OPINIONS OF THE ATTORNEY GENERAL

An individual providing dental services to county inmates is not an "employee" under the statute. Haque, July 31, 1998, A.G. Op. #98-0397.

CHAPTER 15.

GROUP INSURANCE FOR PUBLIC EMPLOYEES

Article 1.	State Employees Life and Health Insurance Plan.	25-15-1
Article 3.	Group Insurance for Employees of Local Governments and Their Institutions and Agencies.	25-15-101
Article 9.	Administration of Group Insurance Plans.	25-15-301
Article 11.	Mississippi First Responders Health and Safety Act.	25-15-401

ARTICLE 1.

STATE EMPLOYEES LIFE AND HEALTH INSURANCE PLAN.

Sec.
25-15-9. Formulation of state employees health insurance plan; benefits.

§ 25-15-3. Definitions.

OPINIONS OF THE ATTORNEY GENERAL

All full-time employees of MPIA, Inc. are, for purposes of eligibility for state group health and life insurance benefits, considered to be state employees, and therefore entitled to participate in such group insurance plans. Ranck, May 24, 1991, A.G. Op. #91-0331.

MPIA employees receive their compensation from a department, agency or institution of state government, and as such, MPIA is responsible for all employer contributions required under the law to be made on behalf and for the benefit of state employees. Ranck, Oct. 28, 1991, A.G. Op. #91-0697.

If individual is employee, individual is eligible for health insurance benefits assuming that requirements relating to full-time employment and direct payment of compensation from an agency of state government are also met. Ranck, Jan. 10, 1994, A.G. Op. #93-0949.

Self-insured health plans of state of Mississippi are responsibility of state and such liability cannot be transferred to provider organizations. Ranck, Jan. 24, 1994, A.G. Op. #93-0921.

An employee of an economic development district is not a state employee pursuant to Section 25-15-3(a), regardless of the employee's contributions to the state retirement plan. Therefore, the employees of MMDD are not eligible to participate in the State Employees Life and Health Insurance Plan. McMillan, August 23, 1995, A.G. Op. #95-0597.

If an individual is not working full time and is not making contributions to the

State of Mississippi retirement plan, then that individual cannot be considered to be an employee as defined in Section 25-15-3. The employing department, agency, institution, etc., could not in this situation pay the individual's health insurance premium or the state's share of the employee's life insurance premium for the time he or she was not working. Tucker, April 15, 1996, A.G. Op. #96-0220.

If governing authorities fail to elect officers such as a police chief and clerk, the incumbent officers may serve until their successors are appointed. Hill, Aug. 8, 1997, A.G. Op. #97-0401.

For purposes of Section 25-15-3, an employee is considered full time so long as he is receiving compensation from his employer in the form of payment for work performed, medical or personal (vacation) leave, thus, if the employee is not receiving compensation from one of these sources and is not making contributions to the state retirement plan, then the district would have no authority to continue to pay the health insurance premiums for the employee. Mayfield, Sept. 13, 2002, A.G. Op. #02-0417.

The provisions of Title 83, including Sections 83-9-5 and 83-9-32, which are placed squarely within the jurisdiction of the Department of Insurance, are not applicable to the State and School Employees Health Insurance Plan, which is clearly under the administration of the State and School Employees Health Insurance Management Board under the umbrella of the Department of Finance and Administration. Martinson, Dec. 6, 2002, A.G. Op. #02-0668.

The State and School Employees Health Insurance Plan is not governed by ERISA. Martinson, Dec. 6, 2002, A.G. Op. #02-0668.

The article governing group insurance for employees of local governments and their institutions and agencies, §§ 25-15-101 through 25-15-105, are not governed by the definition of "employee" as found in subsection (a) of this section. Such local employers may adopt their own leave policies and contract for group insurance, through which they may provide for payment of health insurance premiums for employees who are off work due to a work-related injury. Stringer, Apr. 2, 2004, A.G. Op. 03-0699.

§ 25-15-9. Formulation of state employees health insurance plan; benefits.

(1)(a) The board shall design a plan of health insurance for state employees that provides benefits for semiprivate rooms in addition to other incidental coverages that the board deems necessary. The amount of the coverages shall be in such reasonable amount as may be determined by the board to be adequate, after due consideration of current health costs in Mississippi. The plan shall also include major medical benefits in such amounts as the board determines. The plan shall provide for coverage for telemedicine services as provided in Section 83-9-351. The board is also authorized to accept bids for such alternate coverage and optional benefits as the board deems proper. The board is authorized to accept bids for surgical services that include assistance in locating a surgeon, setting up initial consultation, travel, a negotiated single case rate bundle and payment for orthopedic, spine, bariatric, cardiovascular and general surgeries. The surgical services may only utilize surgeons and facilities located in the State of Mississippi unless otherwise provided by the board. Any contract for alternative coverage and optional benefits shall be awarded by the board after it has carefully studied and evaluated the bids and selected the best and most cost-effective bid. The board may reject all of the bids; however, the board shall notify all bidders of the rejection and shall actively solicit new bids if all bids are rejected. The board may employ or contract for such consulting or actuarial services as may be necessary to formulate the plan, and to assist the board in the preparation of specifications and in the process of advertising for the bids for the plan. Those contracts shall be solicited and entered into in accordance with Section 25-15-5. The board shall keep a record of all persons, agents and corporations who contract with or assist the board in preparing and developing the plan. The board in a timely manner shall provide copies of this record to the members of the advisory council created in this section and those legislators, or their designees, who may attend meetings of the advisory council. The board shall provide copies of this record in the solicitation of bids for the administration or servicing of the self-insured program. Each person, agent or corporation that, during the previous fiscal year, has assisted in the development of the plan or employed or compensated any person who assisted in the development of the plan, and that bids on the administration or servicing of the plan, shall submit to the board a statement accompanying the bid explaining in detail its participation with the development of the plan. This statement shall include the amount of compensation paid by the bidder to any such employee during the previous fiscal year. The board shall make all such information available to the members of the advisory council and those legislators, or their designees, who may attend meetings of the advisory council before any action is taken by the board on the bids submitted. The failure of any bidder to fully and accurately comply with this paragraph shall result in the rejection of any bid submitted by that bidder or the cancellation of any contract executed when the failure is discovered after the acceptance of that bid. The board is authorized to promulgate rules and regulations to implement the provisions of this subsection.

The board shall develop plans for the insurance plan authorized by this section in accordance with the provisions of Section 25-15-5.

Any corporation, association, company or individual that contracts with the board for the third-party claims administration of the self-insured plan shall prepare and keep on file an explanation of benefits for each claim processed. The explanation of benefits shall contain such information relative to each processed claim that the board deems necessary, and, at a minimum, each explanation shall provide the claimant's name, claim number, provider number, provider name, service dates, type of services, amount of charges, amount allowed to the claimant and reason codes. The information contained in the explanation of benefits shall be available for inspection upon request by the board. The board shall have access to all claims information utilized in the issuance of payments to employees and providers.

(b) There is created an advisory council to advise the board in the formulation of the State and School Employees Health Insurance Plan. The council shall be composed of the State Insurance Commissioner, or his designee, an employee-representative of the institutions of higher learning appointed by the board of trustees thereof, an employee-representative of the Department of Transportation appointed by the director thereof, an employee-representative of the Department of Revenue appointed by the Commissioner of Revenue, an employee-representative of the Mississippi Department of Health appointed by the State Health Officer, an employee-representative of the Mississippi Department of Corrections appointed by the Commissioner of Corrections, and an employee-representative of the Department of Human Services appointed by the Executive Director of Human Services, two (2) certificated public school administrators appointed by the State Board of Education, two (2) certificated classroom teachers appointed by the State Board of Education, a noncertificated school employee appointed by the State Board of Education and a community/junior college employee appointed by the Mississippi Community College Board.

The Lieutenant Governor may designate the Secretary of the Senate, the Chairman of the Senate Appropriations Committee, the Chairman of the Senate Education Committee and the Chairman of the Senate Insurance Committee, and the Speaker of the House of Representatives may designate the Clerk of the House, the Chairman of the House Appropriations Committee, the Chairman of the House Education Committee and the Chairman of the House Insurance Committee, to attend any meeting of the State and School Employees Insurance Advisory Council. The appointing authorities may designate an alternate member from their respective houses to serve when the regular designee is unable to attend the meetings of the council. Those designees shall have no jurisdiction or vote on any matter within the jurisdiction of the council. For attending meetings of the council, the legislators shall receive per diem and expenses, which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the council will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the council without prior approval of the proper committee in their respective houses.

(c) No change in the terms of the State and School Employees Health Insurance Plan may be made effective unless the board, or its designee, has provided notice to the State and School Employees Health Insurance Advisory Council and has called a meeting of the council at least fifteen (15) days before the effective date of the change. If the State and School Employees Health Insurance Advisory Council does not meet to advise the board on the proposed changes, the changes to the plan shall become effective at such time as the board has informed the council that the changes shall become effective.

(d) **Medical benefits for retired employees and dependents under age sixty-five (65) years and not eligible for Medicare benefits.** For employees who retire before July 1, 2005, and for employees retiring due to work-related disability under the Public Employees' Retirement System, the same health insurance coverage as for all other active employees and their dependents shall be available to retired employees and all dependents under age sixty-five (65) years who are not eligible for Medicare benefits, the level of benefits to be the same level as for all other active participants. For employees who retire on or after July 1, 2005, and not retiring due to work-related disability under the Public Employees' Retirement System, the same health insurance coverage as for all other active employees and their dependents shall be available to those retiring employees and all dependents under age sixty-five (65) years who are not eligible for Medicare benefits only if the retiring employees were participants in the State and School Employees Health Insurance Plan for four (4) years or more before their retirement, the level of benefits to be the same level as for all other active participants. This section will apply to those employees who retire due to one hundred percent (100%) medical disability as well as those employees electing early retirement.

(e) **Medical benefits for retired employees and dependents over age sixty-five (65) years or otherwise eligible for Medicare benefits.** For employees who retire before July 1, 2005, and for employees retiring due to work-related disability under the Public Employees' Retirement System, the health insurance coverage available to retired employees over age sixty-five (65) years or otherwise eligible for Medicare benefits, and all dependents over age sixty-five (65) years or otherwise eligible for Medicare benefits, shall be the major medical coverage. For employees retiring on or after July 1, 2005, and not retiring due to work-related disability under the Public Employees' Retirement System, the health insurance coverage described in this paragraph (e) shall be available to those retiring employees only if they were participants in the State and School Employees Health Insurance Plan for four (4) years or more and are over age sixty-five (65) years or otherwise eligible for Medicare benefits, and to all dependents over age sixty-five (65) years or otherwise eligible for Medicare benefits. Benefits shall be reduced by Medicare benefits as though the Medicare benefits were the base plan.

All covered individuals shall be assumed to have full Medicare coverage, Parts A and B; and any Medicare payments under both Parts A and B shall be computed to reduce benefits payable under this plan.

(f) Lifetime maximum: The lifetime maximum amount of benefits payable under the health insurance plan for each participant is Two Million Dollars ($2,000,000.00).

(2) Nonduplication of benefits – reduction of benefits by Title XIX benefits: When benefits would be payable under more than one (1) group plan, benefits under those plans will be coordinated to the extent that the total benefits under all plans will not exceed the total expenses incurred.

Benefits for hospital or surgical or medical benefits shall be reduced by any similar benefits payable in accordance with Title XIX of the Social Security Act or under any amendments thereto, or any implementing legislation.

Benefits for hospital or surgical or medical benefits shall be reduced by any similar benefits payable by workers' compensation.

No health care benefits under the state plan shall restrict coverage for medically appropriate treatment prescribed by a physician and agreed to by a fully informed insured, or if the insured lacks legal capacity to consent by a person who has legal authority to consent on his or her behalf, based on an insured's diagnosis with a terminal condition. As used in this paragraph, "terminal condition" means any aggressive malignancy, chronic end-stage cardiovascular or cerebral vascular disease, or any other disease, illness or condition which physician diagnoses as terminal.

Not later than January 1, 2016, the state health plan shall not require a higher co-payment, deductible or coinsurance amount for patient-administered anti-cancer medications, including, but not limited to, those orally administered or self-injected, than it requires for anti-cancer medications that are injected or intravenously administered by a health care provider, regardless of the formulation or benefit category determination by the plan. For the purposes of this paragraph, the term "anti-cancer medications" has the meaning as defined in Section 83-9-24.

(3)(a) Schedule of life insurance benefits – group term: The amount of term life insurance for each active employee of a department, agency or institution of the state government shall not be in excess of One Hundred Thousand Dollars ($100,000.00), or twice the amount of the employee's annual wage to the next highest One Thousand Dollars ($1,000.00), whichever may be less, but in no case less than Thirty Thousand Dollars ($30,000.00), with a like amount for accidental death and dismemberment on a twenty-four-hour basis. The plan will further contain a premium waiver provision if a covered employee becomes totally and permanently disabled before age sixty-five (65) years. Employees retiring after June 30, 1999, shall be eligible to continue life insurance coverage in an amount of Five Thousand Dollars ($5,000.00), Ten Thousand Dollars ($10,000.00) or Twenty Thousand Dollars ($20,000.00) into retirement.

(b) Effective October 1, 1999, schedule of life insurance benefits – group term: The amount of term life insurance for each active employee of any school district, community/junior college, public library or university-based program authorized under Section 37-23-31 for deaf, aphasic and emotionally disturbed children or any regular nonstudent bus driver shall not be in excess of One Hundred Thousand Dollars ($100,000.00), or twice the amount of the employee's annual wage to the next highest One Thousand Dollars ($1,000.00), whichever may be less, but in no case less than Thirty Thousand Dollars ($30,000.00), with a like amount for accidental death and dismemberment on a twenty-four-hour basis. The plan will further contain a premium waiver provision if a covered employee of any school district, community/junior college, public library or university-based program authorized under Section 37-23-31 for deaf, aphasic and emotionally disturbed children or any regular nonstudent bus driver becomes totally and permanently disabled before age sixty-five (65) years. Employees of any school district, community/junior college, public library or university-based program authorized under Section 37-23-31 for deaf, aphasic and emotionally disturbed children or any regular nonstudent bus driver retiring after September 30, 1999, shall be eligible to continue life insurance coverage in an amount of Five Thousand Dollars ($5,000.00), Ten Thousand Dollars ($10,000.00) or Twenty Thousand Dollars ($20,000.00) into retirement.

(4) Any eligible employee who on March 1, 1971, was participating in a group life insurance program that has provisions different from those included in this article and for which the State of Mississippi was paying a part of the premium may, at his discretion, continue to participate in that plan. The employee shall pay in full all additional costs, if any, above the minimum program established by this article. Under no circumstances shall any individual who begins employment with the state after March 1, 1971, be eligible for the provisions of this subsection.

(5) The board may offer medical savings accounts as defined in Section 71-9-3 as a plan option.

(6) Any premium differentials, differences in coverages, discounts determined by risk or by any other factors shall be uniformly applied to all active employees participating in the insurance plan. It is the intent of the Legislature that the state contribution to the plan be the same for each employee throughout the state.

(7) On October 1, 1999, any school district, community/junior college district or public library may elect to remain with an existing policy or policies of group life insurance with an insurance company approved by the State and School Employees Health Insurance Management Board, in lieu of participation in the State and School Life Insurance Plan. On or after July 1, 2004, until October 1, 2004, any school district, community/junior college district or public library may elect to choose a policy or policies of group life insurance existing on October 1, 1999, with an insurance company approved by the State and School Employees Health Insurance Management Board in lieu of participation in the State and School Life Insurance Plan. The state's contribution of up to fifty percent (50%) of the active employee's premium under the State and School Life Insurance Plan may be applied toward the cost of coverage for full-time employees participating in the approved life insurance company group plan. For purposes of this subsection (7), "life insurance company group plan" means a plan administered or sold by a private insurance company. After October 1, 1999, the board may assess charges in addition to the existing State and School Life Insurance Plan rates to such employees as a condition of enrollment in the State and School Life Insurance Plan. In order for any life insurance company group plan to be approved by the State and School Employees Health Insurance Management Board under this subsection (7), it shall meet the following criteria:

(a) The insurance company offering the group life insurance plan shall be rated "A-" or better by A.M. Best state insurance rating service and be licensed as an admitted carrier in the State of Mississippi by the Mississippi Department of Insurance.

(b) The insurance company group life insurance plan shall provide the same life insurance, accidental death and dismemberment insurance and waiver of premium benefits as provided in the State and School Life Insurance Plan.

(c) The insurance company group life insurance plan shall be fully insured, and no form of self-funding life insurance by the company shall be approved.

(d) The insurance company group life insurance plan shall have one (1) composite rate per One Thousand Dollars ($1,000.00) of coverage for active employees regardless of age and one (1) composite rate per One Thousand Dollars ($1,000.00) of coverage for all retirees regardless of age or type of retiree.

(e) The insurance company and its group life insurance plan shall comply with any administrative requirements of the State and School Employees Health Insurance Management Board. If any insurance company providing group life insurance benefits to employees under this subsection (7) fails to comply with any requirements specified in this subsection or any administrative requirements of the board, the state shall discontinue providing funding for the cost of that insurance.

HISTORY: Codes, 1942, § 5834-135; Laws, 1971, ch. 523, § 5; Laws, 1972, ch. 537, § 2; Laws, 1976, ch. 477, § 1; Laws, 1980, ch. 341, § 1; Laws, 1981, ch. 324, § 1; Laws, 1984, ch. 488, § 145; Laws, 1987, ch. 427; Laws, 1999, ch. 511, § 3; Laws, 2002, ch. 636, § 5; Laws, 2004, ch. 564, § 2; Laws, 2005, 2nd Ex Sess, ch. 106, § 2; Laws, 2008, ch. 560, § 1; brought forward without change, Laws, 2009, ch. 434, § 2; Laws, 2013, ch. 478, § 3; Laws, 2014, ch. 439, § 2; Laws, 2015, ch. 490, § 2; Laws, 2016, ch. 397, § 20, eff from and after July 1, 2016.

Editor's Notes – This section is set out above to correct an error in subsection (2) of the section as it appears in the 2018 Replacement Volume 7.

OPINIONS OF THE ATTORNEY GENERAL

The State and School Employees Health Insurance Management Board is required to design a plan of health insurance for all employees (as defined in § 25-15-3) that provides hospitalization and major medical benefits. Benefits contained within the plan may be provided through a contract or contracts of insurance or through a self-insured program. In addition to these benefits, the Board may make available, at the option of the employees, alternate coverage and optional benefits by way of a contract or contracts of insurance. Stringer, Feb. 22, 2005, A.G. Op. 05-0030.

§ 25-15-11. Contracts of insurance; self insurance; contracts for administration of plan; reports, reviews and audits.

OPINIONS OF THE ATTORNEY GENERAL

The State and School Employees Health Insurance Management Board is required to design a plan of health insurance for all employees (as defined in § 25-15-3) that provides hospitalization and major medical benefits. Benefits contained within the plan may be provided through a contract or contracts of insurance or through a self-insured program. In addition to these benefits, the Board may make available, at the option of the employees, alternate coverage and optional benefits by way of a contract or contracts of insurance. Stringer, Feb. 22, 2005, A.G. Op. 05-0030.

§ 25-15-15. Payment of premiums; active full-time employees assessed portion of active employee premium under certain circumstances; purchase of additional coverage; late charges and interest penalties; State Employees Insurance Fund; Insurance Reserve Fund [Repealed effective July 1, 2022].

OPINIONS OF THE ATTORNEY GENERAL

Section 25-15-15 provides the state shall pay one hundred percent of the cost of the state health insurance plan for all active full time employees. Therefore, the payment of the cost of premiums on the state health insurance plan for active full time employees is a continuing obligation of the state, separate and independent from the benefits afforded through workers' compensation. Ranck, July 28, 1995, A.G. Op. #95-0517.

ARTICLE 3.

GROUP INSURANCE FOR EMPLOYEES OF LOCAL GOVERNMENTS AND THEIR INSTITUTIONS AND AGENCIES.

§ 25-15-101. Administration of insurance program; self-insurance; liability for payment of benefits and loss or misappropriation of funds.

OPINIONS OF THE ATTORNEY GENERAL

Although counties are specifically authorized to purchase group insurance policies for employees and dependents covering life, salary protection, health, accident and hospitalization, and hospital and/or medical and/or surgical services or benefits, there is no apparent authority for county to make loans to employees from county self-insurance fund. Griffin, Sept. 2, 1992, A.G. Op. #92-0632.

Although municipalities may obtain health insurance and other kinds of insurance for employees and their dependents, there is apparently no authority for municipality to provide health insurance for individuals such as Chamber of Commerce members who are not employees of city and who reimburse municipality for amount of their premiums. Rogers, Nov. 12, 1992, A.G. Op. #92-0835.

Although counties and cities are without authority to provide specific types of insurance set forth in Section 25-15-101 to volunteer firefighters, tort risk coverage may be provided under Section 11-46-1. Ranck, Feb. 16, 1994, A.G. Op. #94-0080.

County board of supervisors is authorized in its discretion to provide insurance coverage pursuant to and in accordance with Mississippi Code Annotated Sections 25-15-101 and 25-15-103 for county election commissioners. Shackelford, March 22, 1994, A.G. Op. #94-0130.

Pursuant to Section 25-15-101, a school board has the authority in its discretion to provide term life insurance for its employees as a fringe benefit; the amount of coverage allowed is governed by Section 25-15-103. Johnson, December 20, 1995, A.G. Op. #95-0804.

Municipal governing authorities in their discretion may pay a police officer who has health insurance from another source a salary which encompasses the base pay for the position of police officer and the amount which the town pays for the health insurance premium for a municipal employee. See Sections 25-15-101, 25-15-103 and 21-3-5. Davies, February 23, 1996, A.G. Op. #96-0091.

Section 25-15-101 provides that municipalities may negotiate for and secure policies of group insurance covering all or specified groups of the employees and their dependents. Primeaux, November 15, 1996, A.G. Op. #96-0501.

A county has discretion to provide group medical and health insurance to its coroner, but it is not required to do so. Williams, July 18, 1997, A.G. Op. #97-0428.

A municipality may not act as the administrator of its own self-funded health insurance program. Wansley, July 10, 1998, A.G. Op. #98-0283.

Before the governing authorities of a municipality may pay claims for medical expenses by employees or dependents, they must establish the municipality as a self insurer by order on the minutes and must set forth the specific terms and conditions of the contract for insurance between the city and the employees; the governing authorities do not have authority to pay claims for medical expenses of employees unless the city is a self insurer with the terms and conditions of the insurance coverage set forth in the minutes. Power, Nov. 5, 1999, A.G. Op. #99-0592.

A county board of supervisors may establish a group composed of the elected officials of the county, or include such officials in an existing group, and in either event, pay the premiums for dependent health insurance coverage for such group. Lee, Jr., March 24, 2000, A.G. Op. #2000-0125.

A county board of supervisors may establish a group composed of the elected officials of the county, or include such officials in an existing group, and in either event, pay the premiums for dependent health insurance coverage for such group after deducting the amounts necessary to pay the costs of such dependent health coverage. Lee, Jr., June 22, 2000, A.G. Op. #2000-0125.

A municipality may elect to provide group health insurance for its employees and dependents and may pay the full costs of all such benefits. Baker, June 23, 2000, A.G. Op. #2000-0313.

The statute only refers to what types of policies may be procured by a municipality on behalf of its employees, and does not affect what types of coverage the employees may obtain on their own behalf; cancer policies are clearly contemplated within the meaning of health policies, and disability coverage protecting an employee's salary and other expenses is authorized. Perkins, Apr. 23, 2001, A.G. Op. #01-0204.

There is no authority for governing authorities of municipalities to require that all city employees pay a certain percentage of their salaries in order to be included in a group insurance policy, rather than paying the employees' proportionate part of the premiums according to the rates set in the contract negotiated by the municipality with the insurance carrier pursuant to the statute. Grimley, Oct. 12, 2001, A.G. Op. #01-0550.

There is no requirement for self-insured public entities to carry any sort of reinsurance. Armstrong, Sept. 13, 2002, A.G. Op. #02-0526.

The provisions of this article governing group insurance for employees of local governments and their institutions and agencies are not governed by the definition of "employee" as found in § 25-15-3(a). Such local employers may adopt their own leave policies and contract for group insurance, through which they may provide for payment of health insurance premiums for employees who are off work due to a work-related injury. Stringer, Apr. 2, 2004, A.G. Op. 03-0699.

A law firm retained by a municipality in accordance with § 21-15-27 is not an "employee" of the municipality and therefore members of the firm and their dependents are not eligible for the health insurance coverage specified in this section and § 25-15-103. Campbell, Sept. 3, 2004, A.G. Op. 04-0440.

A county board of supervisors is authorized, but is not required to provide insurance coverage for all county and county district officers and employees, including election commissioners, pursuant to this section and § 25-15-103. Meadows, Sept. 3, 2004, A.G. Op. 04-0442.

A board of supervisors may make a payment or temporary transfer from the general fund to the claims pool in order to make timely payment of any claims covered by the county health plan, whether such claims relate to employee coverage, dependent coverage or coverage required by COBRA. Creekmore, Feb. 4, 2005, A.G. Op. 04-0630.

A municipality may modify its current major medical insurance plan to authorize participation by only those dependents who do not have primary coverage through their own place of employment. Rutledge, Feb. 4, 2005, A.G. Op. 04-0574.

§ 25-15-103. Amount of coverage.

(1) The maximum amount of group insurance or other coverage used in determining employer's limitation of one hundred percent (100%) of such costs shall be determined by regulations promulgated by the governing board or head of any political subdivision, school district, junior college district, institution, department or agency named in Section 25-15-101 and this section, but the life insurance for each employee shall not exceed Fifty Thousand Dollars ($50,000.00), or the amount of deduction allowed by the United States Internal Revenue Service in filing a federal tax return, whichever is greater. A like amount may be for accidental death, accident, health and salary protection insurance, providing benefits not exceeding sixty percent (60%) of the employee's income, or the amount allowed by the United States Internal Revenue Service in filing a federal tax return, whichever is greater. Hospitalization benefits for room and board may not exceed the average semiprivate cost per day; and the other coverages authorized hereinabove. The limitations in this subsection on the amount of group insurance and other coverage which employers may obtain for their employees shall not be applicable to municipalities.

(2) Any employee who retires due to one hundred percent (100%) medical disability, or due to reaching the statutory age of retirement under the provisions of the Public Employees' Retirement Law of 1952, being Sections 25-11-101 through 25-11-139, may, if he elects, remain a member of the group plan for such life insurance and other benefits as may be agreed to by the governing board or institution, department, or agency head and the companies writing such insurance and other coverage, by paying the entire costs thereof.

(3) When any of the political subdivisions, school districts, junior college districts, institutions, departments, or agencies named in Section 25-15-101 and this section have adopted the group coverage plan authorized by said sections, any of the employees thereof participating in the plan who desire to secure additional benefits for their dependents with the company or companies providing such group coverage may do so by authorizing in writing the deduction from his or her salary or wages of the necessary amounts for the full payment of such additional coverage, and the same may be deducted and paid for such purposes, but the entire cost of such additional coverage for dependents shall be paid by the employee.

(4)(a) A municipality may provide group life insurance coverage for all or specified groups of its public employees and group hospitalization benefits for such public employees and their dependents, and the municipality may pay the total of the cost of all benefits under this section.

(b) A county may provide group life insurance coverage for all or specified groups of its public employees and group hospitalization benefits for such public employees and their dependents, and the county may pay the total of the cost of all benefits under this section. A county may make such provision, as specified under this paragraph, retroactively for any existing group coverage plan previously adopted by the county.

(5)(a) The board of supervisors of any county or governing authority of any municipality may offer any Medicare-eligible county or municipal employee supplemental compensation if the employee chooses to secure Medicare coverage in lieu of participating in any county or municipal medical or health insurance program, as the case may be, limited to an amount which shall not exceed the county's or municipality's cost for the employee to participate in such county or municipal medical or health insurance program. The provisions of this subsection shall not apply to coverage by Medicaid. Nothing in this subsection shall be construed to require a county or municipal employee to choose Medicare coverage in lieu of participating in any county or municipal medical or health insurance program, and a county or municipality shall not withhold participation in any county or municipal medical or health insurance program by a Medicare-eligible employee who is otherwise eligible for such county or municipal medical or health insurance program.

(b) Before the supplemental compensation may be provided, as specified under this subsection, the employee shall provide verifiable proof that he has secured coverage under Medicare. Receipt of purchase for the Medicare coverage shall be provided on an annual basis to the employer.

HISTORY: Codes, 1942, § 5649; Laws, 1958, ch. 435, § 3; Laws, 1962, ch. 454, §§ 3, 4; Laws, 1964, ch. 469, §§ 2, 3 [subs. 1, 2]; Laws, 1966, ch. 521, § 2; Laws, 1968, ch. 477, §§ 1-4; Laws, 1970, ch. 447, § 1; Laws, 1970, ch. 448, § 1; Laws, 1971, ch. 523, § 15; Laws, 1971, ch. 523, § 14, 1973, ch. 460, § 1; Laws, 1974, ch. 535; Laws, 1977, ch. 496, § 2; Laws, 1982, ch. 362, § 1; Laws, 1988, ch. 460, § 2; Laws, 2002, ch. 636, § 9; brought forward without change, Laws, 2015, ch. 365, § 2, eff from and after July 1, 2015; Laws, 2019, ch. 486, § 1, eff from and after passage (approved April 18, 2019); Laws, 2021, ch. 382, § 1, eff from and after July 1, 2021.

Amendment Notes — The 2019 amendment, effective April 18, 2019, designated the formerly undesignated first four paragraphs as (1) through (4)(a), and added (4)(b); and made a minor stylistic change.

The 2021 amendment, in the last sentence in (1), substituted "this subsection" for "this paragraph"; added (5); and made a minor punctuation change.

OPINIONS OF THE ATTORNEY GENERAL

County board of supervisors is authorized in its discretion to provide insurance coverage pursuant to and in accordance with Mississippi Code Annotated Sections 25-15-101 and 25-15-103 for county election commissioners. Shackelford, March 22, 1994, A.G. Op. #94-0130.

Pursuant to Section 25-15-101, a school board has the authority in its discretion to provide term life insurance for its employees as a fringe benefit; the amount of coverage allowed is governed by Section 25-15-103. Johnson, December 20, 1995, A.G. Op. #95-0804.

Municipal governing authorities in their discretion may pay a police officer who has health insurance from another source a salary which encompasses the base pay for the position of police officer and the amount which the town pays for the health insurance premium for a municipal employee. See Sections 25-15-101 and 21-3-5. Davies, February 23, 1996, A.G. Op. #96-0091.

Municipal employees who retire due to full medical disability or to reaching the statutory retirement age may elect to remain a member of the municipality's group plan for life insurance and other benefits, with the approval of the insurance carrier, by paying the entire costs thereof; there is no authority for the municipality to assume or contribute to the cost of providing life insurance or other benefits on behalf of its employees who retire from municipal employment. Tisdale, October 16, 1998, A.G. Op. #98-0632.

A municipality may elect to provide group health insurance for its employees and dependents and may pay the full costs of all such benefits. Baker, June 23, 2000, A.G. Op. #2000-0313.

Where an employee takes compensatory time for the last several weeks of his employment with a county prior to the effective date of his resignation, the county is precluded from continung to provide insurance benefits during such period. Yancey, Mar. 23, 2001, A.G. Op. #01-0102.

As a retired employee choosing to participate in the self insured plan provided by the public utilities commission of a city must bear the full expenses of that coverage, the self insured amount. The commission is not authorized to make expenditures for a retired employee's participation in the self insured plan. Hunt, Nov. 21, 2003, A.G. Op. 03-0621.

A law firm retained by a municipality in accordance with § 21-15-27 is not an "employee" of the municipality and therefore members of the firm and their dependents are not eligible for the health insurance coverage specified in this section and § 25-15-101. Campbell, Sept. 3, 2004, A.G. Op. 04-0440.

A county board of supervisors is authorized, but is not required to provide insurance coverage for all county and county district officers and employees, including election commissioners, pursuant to § 25-15-101 and this section. Meadows, Sept. 3, 2004, A.G. Op. 04-0442.

A city may not fund any portion of the premiums of any retiree opting to participate in the city's health insurance plan. The city may pay the premiums or any portion of the premiums for current employees participating in the plan. Hewes, Nov. 12, 2004, A.G. Op. 04-0514.

§ 25-15-105. Exception for school district employees in federally impacted areas.

OPINIONS OF THE ATTORNEY GENERAL

A county does not have authority to include cases fees earned by a coroner in paying state retirement benefits, but can only pay such benefits based on the part of a coroner's compensation that is not composed of fees. Williams, July 18, 1997, A.G. Op. #97-0428.

ARTICLE 9.

ADMINISTRATION OF GROUP INSURANCE PLANS.

Sec.
25-15-303. State and Public School Employees Health Insurance Management Board.

§ 25-15-303. State and Public School Employees Health Insurance Management Board.

(1) There is created the State and School Employees Health Insurance Management Board, which shall administer the State and School Employees Life and Health Insurance Plan provided for under Section 25-15-3 et seq. The State and School Employees Health Insurance Management Board, hereafter referred to as the "board," shall also be responsible for administering all procedures for selecting third-party administrators provided for in Section 25-15-301.

(2) The board shall consist of the following:

(a) The Chairman of the Workers' Compensation Commission or his or her designee;

(b) The State Personnel Director, or his or her designee;

(c) The Commissioner of Insurance, or his or her designee;

(d) The Commissioner of Higher Education, or his or her designee;

(e) The State Superintendent of Public Education, or his or her designee;

(f) The Executive Director of the Department of Finance and Administration, or his or her designee;

(g) The Executive Director of the Mississippi Community College Board, or his or her designee;

(h) The Executive Director of the Public Employees' Retirement System, or his or her designee;

(i) Two (2) appointees of the Governor whose terms shall be concurrent with that of the Governor, one (1) of whom shall have experience in providing actuarial advice to companies that provide health insurance to large groups and one (1) of whom shall have experience in the day-to-day management and administration of a large self-funded health insurance group;

(j) The Chairman of the Senate Insurance Committee, or his or her designee;

(k) The Chairman of the House of Representatives Insurance Committee, or his or her designee;

(*l*) The Chairman of the Senate Appropriations Committee, or his or her designee; and

(m) The Chairman of the House of Representatives Appropriations Committee, or his or her designee.

The legislators, or their designees, shall serve as ex officio, nonvoting members of the board.

The Executive Director of the Department of Finance and Administration shall be the chairman of the board.

(3) The board shall meet at least monthly and maintain minutes of the meetings. A quorum shall consist of a majority of the authorized voting membership of the board. The board shall have the sole authority to promulgate rules and regulations governing the operations of the insurance plans and shall be vested with all legal authority necessary and proper to perform this function including, but not limited to:

(a) Defining the scope and coverages provided by the insurance plan;

(b) Seeking proposals for services or insurance through competitive processes where required by law and selecting service providers or insurers under procedures provided for by law; and

(c) Developing and adopting strategic plans and budgets for the insurance plan.

The department shall employ a State Insurance Administrator, who shall be responsible for the day-to-day management and administration of the insurance plan. The Department of Finance and Administration shall provide to the board on a full-time basis personnel and technical support necessary and sufficient to effectively and efficiently carry out the requirements of this section.

(4) Members of the board shall not receive any compensation or per diem, but may receive travel reimbursement provided for under Section 25-3-41 except that the legislators shall receive per diem and expenses, which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the board shall be paid while the Legislature is in session.

HISTORY: Laws, 1997, ch. 606, § 10; Laws, 1999, ch. 511, § 13; Laws, 2005, ch. 408, § 1; Laws, 2007, ch. 435, § 1; Laws, 2012, ch. 347, § 1; Laws, 2012, ch. 349, § 1; Laws, 2014, ch. 397, § 5, eff from and after July 1, 2014; Laws, 2020, ch. 333, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (2), added "or his or her designee" at the end of (a), (b) and (d) through (h), and inserted "or her" in (c) and (j) through (m).

ARTICLE 11.

MISSISSIPPI FIRST RESPONDERS HEALTH AND SAFETY ACT

Sec.

25-15-401. Short title [Effective July 1, 2023].
25-15-403. Definitions [Effective July 1, 2023].
25-15-405. Alternative benefits to workers' compensation for first responders who have completed a certain number of years of service upon diagnosis of certain cancers caused by occupational hazards [Effective July 1, 2023].
25-15-407. Cost of cancer coverage through insurance policies or self-funded systems to be borne by employer; county and municipal governing authorities authorized to use tax proceeds to provide insurance [Effective July 1, 2023].
25-15-409. State, municipality, county or fire district required to show proof of insurance coverage meeting requirements of article [Effective July 1, 2023].

§ 25-15-401. Short title [Effective July 1, 2023].

This article shall be known and may be cited as the "Mississippi First

Responders Health and Safety Act" and may also be referred to as the "Arson Investigator Danny Benton and Police Chief Henry Manuel, Sr., Act."

HISTORY: Laws, 2019, ch. 467, § 1, eff from and after July 1, 2021.

Editor's Note — Laws of 2019, ch. 467, § 7, as amended by Laws of 2020, ch. 471, § 2, and as amended by Laws of 2021, ch. 364, § 2, provides:
"SECTION 7. This act shall take effect and be in force from and after July 1, 2023."

§ 25-15-403. Definitions [Effective July 1, 2023].

For purposes of this article, the following words shall have the following meanings unless the context clearly indicates otherwise:

(a) "Cancer" means a disease caused by an uncontrolled division of abnormal cells in a part of the body or a malignant growth or tumor resulting from the division of abnormal cells. "Cancer" is limited to cancer affecting the bladder, brain, colon, liver, pancreas, skin, kidney, gastrointestinal tract, reproductive tract, leukemia, lymphoma, multiple myeloma, prostate, testicles and breast.

(b) "Firefighter" means any firefighter who has ten (10) or more years of service and is employed by the State of Mississippi, or any political subdivision thereof, on a full-time duty status, and any firefighter who has ten (10) or more years of service and is registered with the State of Mississippi, or a political subdivision thereof, on a volunteer firefighting status.

(c) "Law enforcement officer" means any officer who has been certified by the Mississippi Board on Law Enforcement Officer Standards and Training and has ten (10) or more years of service.

(d) "First responder" means any firefighter and law enforcement officer as defined in paragraphs (b) and (c) of this section.

HISTORY: Laws, 2019, ch. 467, § 2, eff from and after July 1, 2021.

Editor's Note — Laws of 2019, ch. 467, § 7, as amended by Laws of 2020, ch. 471, § 2, and as amended by Laws of 2021, ch. 364, § 2, provides:
"SECTION 7. This act shall take effect and be in force from and after July 1, 2023."

§ 25-15-405. Alternative benefits to workers' compensation for first responders who have completed a certain number of years of service upon diagnosis of certain cancers caused by occupational hazards [Effective July 1, 2023].

(1) As an alternative to pursuing workers' compensation benefits, upon a diagnosis of cancer, a first responder is entitled to the following benefits:

(a) Provided the diagnosis occurs on or after the first responder's effective date of coverage, a lump-sum benefit of Thirty-five Thousand Dollars ($35,000.00) of coverage for each diagnosis payable to the first responder upon acceptable proof to the insurance carrier or other payor of a diagnosis by a board-certified physician in the medical specialty appropriate for the type of cancer diagnosed that the cancer was caused by an occupational hazard and that there are one or more malignant tumors characterized by the uncontrollable and abnormal growth and spread of malignant cells with invasion of normal tissue and that either:

(i) There is metastasis, and surgery, radiotherapy or chemotherapy is medically necessary;

(ii) There is a tumor of the prostate, provided that it is treated with radical prostatectomy or external beam therapy; or

(iii) The first responder has terminal cancer, his or her life expectancy is twenty-four (24) months or less from the date of diagnosis, and will not benefit from, or has exhausted, curative therapy.

(b) Provided the diagnosis occurs on or after the first responder's effective date of coverage, a lump-sum benefit of Six Thousand Two Hundred Fifty Dollars ($6,250.00) for each diagnosis payable to the first responder upon acceptable proof to the insurance carrier or other payor of a diagnosis by a board-certified physician in the medical specialty appropriate for the type of cancer involved that:

(i) There is carcinoma in situ such that surgery, radiotherapy or chemotherapy has been determined to be medically necessary;

(ii) There are malignant tumors which are treated by endoscopic procedures alone; or

(iii) There are malignant melanomas.

(c) The combined total of benefits received by any first responder under paragraphs (a) and (b) of this subsection (1) during his or her lifetime shall not exceed Fifty Thousand Dollars ($50,000.00).

(d) Provided the date of disability occurs on or after the first responder's effective date of coverage, a disability benefit payable as a result of a specific cancer to begin six (6) months after the date of disability and submission to the insurance carrier or other payor of acceptable proof of disability caused by the specified disease or events such that the illness precludes the first responder from serving as a first responder:

(i) For nonvolunteer first responders, a monthly benefit equal to sixty percent (60%) of the first responder's monthly salary as an employed first responder with a fire or police department or a monthly benefit of Five Thousand Dollars ($5,000.00), whichever is less, of which the first payment shall be made six (6) months after the total disability and shall continue for thirty-six (36) consecutive monthly payments unless the first responder regains the ability to perform his or her duties as determined by reevaluation under subparagraph (iv) of this paragraph, at which time the payments shall cease the last day of the month of reevaluation;

(ii) For volunteer firefighters, a monthly benefit of One Thousand Five Hundred Dollars ($1,500.00) of which the first payment shall be made six (6) months after the total disability and shall continue for thirty-six (36) consecutive monthly payments unless the first responder regains the ability to perform his or her duties as determined by reevaluation under subparagraph (iv) of this paragraph, at which time the payments shall cease the last day of the month of reevaluation;

(iii) Such monthly benefit shall be subordinate to any other benefit actually paid to the first responder solely for such disability from any other source, not including private insurance purchased solely by the first responder;

(iv) Any first responder receiving the monthly benefits may be required to have his or her condition reevaluated. In the event any such reevaluation reveals that such person has regained the ability to perform duties as a first responder, then his or her monthly benefits shall cease the last day of the month of reevaluation; and

(v) In the event that there is a subsequent recurrence of a disability caused by a specified cancer, which precludes the first responder from serving as a first responder, he or she shall be entitled to receive any remaining monthly payments.

(e) An eligible first responder who dies as a result of a compensable type of cancer, or circumstances arising out of the treatment of a compensable type of cancer, but does not submit sufficient proof of claim prior to the first responder's death, is entitled to receive benefits specified in paragraphs (a) and (b) of this subsection (1) and made available to the deceased first responder's beneficiary or beneficiaries.

(f) Any first responder who was simultaneously a member of more than one (1) fire or police department at the time of diagnosis shall not be entitled to receive benefits from or on behalf of more than one (1) fire or police department. The first responder's primary place of employment shall maintain coverage for the eligible first responder; and

(g) An otherwise eligible first responder shall be precluded from the benefits listed under this section if he or she has filed for workers' compensation for the same diagnosis of cancer.

HISTORY: Laws, 2019, ch. 467, § 3, eff from and after July 1, 2021.

Editor's Note — Laws of 2019, ch. 467, § 7, as amended by Laws of 2020, ch. 471, § 2, and as amended by Laws of 2021, ch. 364, § 2, provides:

"SECTION 7. This act shall take effect and be in force from and after July 1, 2023."

§ 25-15-407. Cost of cancer coverage through insurance policies or self-funded systems to be borne by employer; county and municipal governing authorities authorized to use tax proceeds to provide insurance [Effective July 1, 2023].

The costs of purchasing an insurance policy that provides for cancer coverage in compliance with this article, or the costs of providing such benefits through a self-funded system in compliance with this article, must be borne solely by the employer that employs the eligible first responder and may not be funded partially or wholly by individual first responders. In addition to any other purpose authorized, county governing authorities and municipal governing authorities may use proceeds from county and municipal taxes for the purposes of providing insurance in compliance with this article. The computation of premium amounts by an insurer for the coverage under this article shall be subject to generally accepted adjustments from insurance underwriting.

HISTORY: Laws, 2019, ch. 467, § 4, eff from and after July 1, 2021.

Editor's Note — Laws of 2019, ch. 467, § 7, as amended by Laws of 2020, ch. 471, § 2, and as amended by Laws of 2021, ch. 364, § 2, provides:

"SECTION 7. This act shall take effect and be in force from and after July 1, 2023."

§ 25-15-409. State, municipality, county or fire district required to show proof of insurance coverage meeting requirements of article [Effective July 1, 2023].

(1) The state, municipality, county or fire protection district shall, no later than January 1, 2024, show proof of insurance coverage that meets the requirements of this article to the Commissioner of Insurance, or shall show satisfactory proof of the ability to pay such compensation to ensure adequate coverage for all eligible first responders.

(2) The Commissioner of Insurance shall adopt such rules and regulations as are reasonable and necessary to implement the provisions of this article. Such regulations shall include the process by which a first responder files a claim for cancer and the process by which claimants can appeal a denial of benefits.

(3) The Commissioner of Insurance shall adopt rules to establish firefighter cancer prevention best practices as it relates to personal protective equipment, decontamination, fire suppression, apparatus and fire stations.

HISTORY: Laws, 2019, ch. 467, § 5, eff from and after July 1, 2021; Laws, 2020, ch. 471, § 3, eff from and after July 1, 2020; Laws, 2021, ch. 364, § 1, eff from and after July 1, 2021.

Editor's Note — Laws, 2019, ch. 467, § 5, eff from and after July 1, 2021; Laws of 2019, ch. 467, § 7, as amended by Laws of 2020, ch. 471, § 2, and as amended by Laws of 2021, ch. 364, § 2, provides:

"SECTION 7. This act shall take effect and be in force from and after July 1, 2023."

Amendment Notes — The 2020 amendment substituted "Commissioner of Insurance" for "Attorney General" everywhere it appears; and in (1), substituted "January 1, 2023" for "January 1, 2022."

The 2021 amendment, in (1), substituted "July 1, 2024" for "July 1, 2023."

CHAPTER 31.

DISTRICT ATTORNEYS

Sec.
25-31-1. Qualifications for office.

Sec.
25-31-5. Legal assistants to district attorney; expenditure of certain federal funds for additional legal assistants and criminal investigators authorized.
25-31-10. Criminal investigators.
25-31-11. Powers and duties.

§ 25-31-1. Qualifications for office.

(1) The district attorney shall possess all the qualifications of county officers and, in addition thereto, shall be a resident of the district in which he or she seeks election for five (5) years immediately preceding the day of the election, shall be a regular licensed and practicing attorney, and shall have been duly admitted to practice before the Supreme Court of the State of Mississippi for a period of two (2) years.

(2) The residency requirements specified under this section shall apply to elections held from and after January 1, 2020.

HISTORY: Codes, 1942, § 3920.3; Laws, 1966, ch. 389, § 1, eff from and after passage (approved May 17, 1966); Laws, 2019, ch. 433, § 3, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment inserted "shall be a resident of the district in which he or she seeks election for five (5) years immediately preceding the day of the election" in (1); and added (2).

§ 25-31-5. Legal assistants to district attorney; expenditure of certain federal funds for additional legal assistants and criminal investigators authorized.

[Effective until January 1, 2023, this section shall read as follows:]

(1) The following number of full-time legal assistants are authorized in the following circuit court districts:

(a) First Circuit Court District .... (9) legal assistants.
(b) Second Circuit Court District .....ten (10) legal assistants. nine (9) legal assistants.
(c) Third Circuit Court District ....five (5) legal assistants.
(d) Fourth Circuit Court District ....six (6) legal assistants.
(e) Fifth Circuit Court District....................five (5) legal assistants.
(f) Sixth Circuit Court District....................two (2) legal assistants.
(g) Seventh Circuit Court District...........eleven (11) legal assistants.
(h) Eighth Circuit Court District...............three (3) legal assistants.
(i) Ninth Circuit Court District.................three (3) legal assistants.
(j) Tenth Circuit Court District..................four (4) legal assistants.
(k) Eleventh Circuit Court District ....five (5) legal assistants.
(*l*) Twelfth Circuit Court District.................five (5) legal assistants.
(m) Thirteenth Circuit Court District..........four (4) legal assistants.
(n) Fourteenth Circuit Court District...........five (5) legal assistants.

(o) Fifteenth Circuit Court District ....six (6) legal assistants.
(p) Sixteenth Circuit Court District..............five (5) legal assistants.
(q) Seventeenth Circuit Court District........seven (7) legal assistants.
(r) Eighteenth Circuit Court District ....two (2) legal assistants.
(s) Nineteenth Circuit Court District............six (6) legal assistants.
(t) Twentieth Circuit Court District ....six (6) legal assistants.
(u) Twenty-first Circuit Court District ....three (3) legal assistants.
(v) Twenty-second Circuit Court District .....three (3) legal assistants.

(2) In addition to any legal assistants authorized pursuant to subsection (1) of this section, the following number of full-time legal assistants are authorized (i) in the following circuit court districts if funds are appropriated by the Legislature to adequately fund the salaries, expenses and fringe benefits of such legal assistants, or (ii) in any of the following circuit court districts in which the board of supervisors of one or more of the counties in a circuit court district adopts a resolution to pay all of the salaries, supplemental pay, expenses and fringe benefits of legal assistants authorized in such district pursuant to this subsection:

(a) First Circuit Court District ....two (2) legal assistants.
(b) Second Circuit Court District................two (2) legal assistants.
(c) Third Circuit Court District..................two (2) legal assistants.
(d) Fourth Circuit Court District ....two (2) legal assistants.
(e) Fifth Circuit Court District....................two (2) legal assistants.
(f) Sixth Circuit Court District....................two (2) legal assistants.
(g) Seventh Circuit Court District...............two (2) legal assistants.
(h) Eighth Circuit Court District ....two (2) legal assistants.
(i) Ninth Circuit Court District....................two (2) legal assistants.
(j) Tenth Circuit Court District ....two (2) legal assistants.
(k) Eleventh Circuit Court District ....two (2) legal assistants.
(*l*) Twelfth Circuit Court District................two (2) legal assistants.
(m) Thirteenth Circuit Court District ....two (2) legal assistants.
(n) Fourteenth Circuit Court District...........two (2) legal assistants.
(o) Fifteenth Circuit Court District ....two (2) legal assistants.
(p) Sixteenth Circuit Court District..............two (2) legal assistants.
(q) Seventeenth Circuit Court District ....two (2) legal assistants.
(r) Eighteenth Circuit Court District ....two (2) legal assistants.
(s) Nineteenth Circuit Court District ....two (2) legal assistants.
(t) Twentieth Circuit Court District..............two (2) legal assistants.
(u) Twenty-first Circuit Court District ....two (2) legal assistants.
(v) Twenty-second Circuit Court District ......two (2) legal assistants.

(3) The board of supervisors of any county may pay all or a part of the salary, supplemental pay, expenses and fringe benefits of any district attorney or legal assistant authorized in the circuit court district to which such county belongs pursuant to this section.

(4) The district attorney of any circuit court district may employ additional legal assistants or criminal investigators, or both, without regard to any limitation on the number of legal assistants authorized in this section or

criminal investigators authorized by other provisions of law to the extent that the district attorney's office receives funds from any source. Any source shall include, but is not limited to, office generated funds, funds from a county, a combination of counties, a municipality, a combination of municipalities, federal funds, private grants or foundations, or by means of an Interlocal Cooperative Agreement authorized by Section 17-13-1 which may be expended for those positions in an amount sufficient to pay all of the salary, supplemental pay, expenses and fringe benefits of the positions. Such funds may either be paid out of district attorney accounts, transferred by the district attorney to the Department of Finance and Administration or to one or more of the separate counties comprising the circuit court district, and said funds shall be disbursed to such employees in the same manner as state-funded criminal investigators and full-time legal assistants. The district attorney shall report to the board of supervisors of each county comprising the circuit court district the amount and source of the supplemental salary, expenses and fringe benefits, and the board in each county shall spread the same on its minutes. The district attorney shall also report such information to the Department of Finance and Administration which shall make such information available to the Legislative Budget Office.

(5) The district attorney shall be authorized to assign the duties of a legal assistant regardless of the source of funding for such legal assistants.

[Effective from and after January 1, 2023, this section shall read as follows:]

(1) The following number of full-time legal assistants are authorized in the following circuit court districts:

(a) First Circuit Court District........................ (9) legal assistants.
(b) Second Circuit Court District .....ten (10) legal assistants. nine (9) legal assistants.
(c) Third Circuit Court District...................five (5) legal assistants.
(d) Fourth Circuit Court District.................six (6) legal assistants.
(e) Fifth Circuit Court District...................five (5) legal assistants.
(f) Sixth Circuit Court District....................two (2) legal assistants.
(g) Seventh Circuit Court District...........eleven (11) legal assistants.
(h) Eighth Circuit Court District...............three (3) legal assistants.
(i) Ninth Circuit Court District.................three (3) legal assistants.
(j) Tenth Circuit Court District..................four (4) legal assistants.
(k) Eleventh Circuit Court District ....five (5) legal assistants.
(*l*) Twelfth Circuit Court District................five (5) legal assistants.
(m) Thirteenth Circuit Court District..........four (4) legal assistants.
(n) Fourteenth Circuit Court District...........five (5) legal assistants.
(o) Fifteenth Circuit Court District ....six (6) legal assistants.
(p) Sixteenth Circuit Court District.............five (5) legal assistants.
(q) Seventeenth Circuit Court District ....three (3) legal assistants.
(r) Eighteenth Circuit Court District ....two (2) legal assistants.
(s) Nineteenth Circuit Court District............six (6) legal assistants.

(t) Twentieth Circuit Court District ....six (6) legal assistants.
(u) Twenty-first Circuit Court District ....three (3) legal assistants.
(v) Twenty-second Circuit Court District .....three (3) legal assistants.
(w) (w) Twenty-third Circuit Court District ...four (4) legal assistants.

(2) In addition to any legal assistants authorized pursuant to subsection (1) of this section, the following number of full-time legal assistants are authorized (i) in the following circuit court districts if funds are appropriated by the Legislature to adequately fund the salaries, expenses and fringe benefits of such legal assistants, or (ii) in any of the following circuit court districts in which the board of supervisors of one or more of the counties in a circuit court district adopts a resolution to pay all of the salaries, supplemental pay, expenses and fringe benefits of legal assistants authorized in such district pursuant to this subsection:

(a) First Circuit Court District ....two (2) legal assistants.
(b) Second Circuit Court District................two (2) legal assistants.
(c) Third Circuit Court District..................two (2) legal assistants.
(d) Fourth Circuit Court District................two (2) legal assistants.
(e) Fifth Circuit Court District...................two (2) legal assistants.
(f) Sixth Circuit Court District...................two (2) legal assistants.
(g) Seventh Circuit Court District...............two (2) legal assistants.
(h) Eighth Circuit Court District................two (2) legal assistants.
(i) Ninth Circuit Court District..................two (2) legal assistants.
(j) Tenth Circuit Court District ....two (2) legal assistants.
(k) Eleventh Circuit Court District ....two (2) legal assistants.
(*l*) Twelfth Circuit Court District...............two (2) legal assistants.
(m) Thirteenth Circuit Court District ....two (2) legal assistants.
(n) Fourteenth Circuit Court District...........two (2) legal assistants.
(o) Fifteenth Circuit Court District ....two (2) legal assistants.
(p) Sixteenth Circuit Court District.............two (2) legal assistants.
(q) Seventeenth Circuit Court District ....two (2) legal assistants.
(r) Eighteenth Circuit Court District ....two (2) legal assistants.
(s) Nineteenth Circuit Court District...........two (2) legal assistants.
(t) Twentieth Circuit Court District.............two (2) legal assistants.
(u) Twenty-first Circuit Court District ....two (2) legal assistants.
(v) Twenty-second Circuit Court District ....two (2) legal assistants.
(w) (w) Twenty-third Circuit Court District ....two (2) legal assistants.

(3) The board of supervisors of any county may pay all or a part of the salary, supplemental pay, expenses and fringe benefits of any district attorney or legal assistant authorized in the circuit court district to which such county belongs pursuant to this section.

(4) The district attorney of any circuit court district may employ additional legal assistants or criminal investigators, or both, without regard to any limitation on the number of legal assistants authorized in this section or criminal investigators authorized by other provisions of law to the extent that the district attorney's office receives funds from any source. Any source shall include, but is not limited to, office generated funds, funds from a county, a

combination of counties, a municipality, a combination of municipalities, federal funds, private grants or foundations, or by means of an Interlocal Cooperative Agreement authorized by Section 17-13-1 which may be expended for those positions in an amount sufficient to pay all of the salary, supplemental pay, expenses and fringe benefits of the positions. Such funds may either be paid out of district attorney accounts, transferred by the district attorney to the Department of Finance and Administration or to one or more of the separate counties comprising the circuit court district, and the funds shall be disbursed to such employees in the same manner as state-funded criminal investigators and full-time legal assistants. The district attorney shall report to the board of supervisors of each county comprising the circuit court district the amount and source of the supplemental salary, expenses and fringe benefits, and the board in each county shall spread the same on its minutes. The district attorney shall also report such information to the Department of Finance and Administration which shall make such information available to the Legislative Budget Office.

(5) The district attorney shall be authorized to assign the duties of a legal assistant regardless of the source of funding for such legal assistants.

HISTORY: Codes, 1942, § 3920.5; Laws, 1955, Ex. ch. 38, §§ 1-4; Laws, 1960, ch. 271, §§ 1-5; Laws, 1962, 2d Ex. Sess. ch. 18; Laws, 1966, ch. 368, § 1; Laws, 1972, ch. 497, § 1; Laws, 1973, ch. 494, § 1; Laws, 1974, ch. 544, § 1; Laws, 1975, ch. 506; Laws, 1976, ch. 468; Laws, 1977, ch. 453, §§ 2, 5; Laws, 1978, ch. 509, § 5; Laws, 1982, ch. 492; Laws, 1984, 1st Ex Sess, ch. 7; Laws, 1985, ch. 502, § 58; Laws, 1987, ch. 458; Laws, 1988, ch. 552; Laws, 1993, ch. 597, § 1; Laws, 1994, ch 564, § 100; Laws, 1996, ch. 512, § 1; Laws, 1997, ch. 577, § 5; Laws, 1999, ch. 501, § 1; Laws, 2005, ch. 506, § 3; Laws, 2006, ch. 561, § 1; Laws, 2007, ch. 558, § 1; Laws, 2009, ch. 455, § 1; Laws, 2010, ch. 529, § 1; Laws, 2014, 1st Ex Sess, ch. 2, § 1, eff from and after November 1, 2014; Laws, 2020, ch. 474, § 1, eff from and after July 1, 2020.

Editor's Notes — Laws of 2020, ch. 474, §§ 8-10, effective July 1, 2020, provide:

"SECTION 8. (1) The new circuit judge position created for the Twenty-third Circuit Court District by virtue of this act shall be filled during the November 2022 judicial election in accordance with Sections 23-15-974 through 23-15-985.

"(2)(a) The office of district attorney for the Twenty-third Circuit Court District created by virtue of this act shall be filled by the person who holds the office of district attorney for the Seventeenth Circuit Court District on December 31, 2022. Such person shall serve as the district attorney for the Twenty-third Circuit Court District until a successor for such office is elected in the November 2023 general election. Notwithstanding any other provision of law to the contrary regarding residency of candidates for the office of district attorney, the person serving as the district attorney for the Seventeenth Circuit Court District as of December 31, 2022, may qualify as a candidate to run for the office of district attorney for the Twenty-third Circuit Court District in the November 2023 general election, if such person is otherwise qualified as a candidate as provided by law.

"(b) The vacancy created by virtue of paragraph (a) of this subsection (2) for the office of district attorney for the Seventeenth Circuit Court District shall be filled by special election on the date set for judicial elections in November 2022, with such person taking office as district attorney for the Seventeenth Circuit Court District on January 1, 2023, for a term to expire as is provided for district attorneys generally. The date and deadline to qualify as a candidate in the special election for such office shall be the same as for judicial candidates for the November 2022 judicial elections.

"(3) The new chancellorship position created for the Third Chancery Court District by virtue of this act shall be filled during the November 2026 judicial election in accordance with Sections 23-15-974 through 23-15-985.

"SECTION 9. Monies appropriated for the purposes of funding drug courts in the Seventeenth and the Twenty-third Circuit Court Districts as described in this act shall be apportioned equally.

"SECTION 10. Sections 3 and 4 of this act shall take effect and be in force from and after January 1, 2023, and the remainder of this act shall take effect and be in force from and after July 1, 2020."

Amendment Notes — The 2020 amendment provided for two versions of the section, and in the version effective from and after January 1, 2023, in (1), substituted "three (3)" for "seven (7)," and added (w); in (2), added (w); and made a minor stylistic change.

OPINIONS OF THE ATTORNEY GENERAL

Drug forfeiture funds that were properly forfeited pursuant to court order can be used for any law enforcement purpose, including payment of salaries of assistant to district attorney, subject to statutory maximum, either directly or through reimbursing county for assistant's salary. Allgood, July 26, 1993, A.G. Op. #93-0416.

§ 25-31-8. Office operating allowance.

OPINIONS OF THE ATTORNEY GENERAL

Expense of special prosecutor in so-called "Teenage sex cases" may be paid from funds generated by Worthless Check Unit at discretion of district attorney. Peters, Jan. 24, 1990, A.G. Op. #90-0040.

County may contribute funds to District Attorney's office but may not arbitrarily set amount of such funds at given percentage of incoming fine moneys. Fortenberry, Oct. 7, 1992, A.G. Op. #92-0774.

There is nothing which prohibits district attorney from making additional payment to criminal records custodian from bad check unit funds for services which meet broadly drawn criteria of statute but such funds may not be used to exceed $15,000 salary cap contained in local and private legislation authorizing position. White, August 11, 1993, A.G. Op. #93-0452.

The Bad Check Unit may be expended on any legitimate expense of the district attorney in the prosecution of the cases. This would include necessary insurance as approved by the State Auditor. See Section 25-31-8. Harkey, April 27, 1995, A.G. Op. #95-0130.

Section 25-31-8 authorizes the board of supervisors of any county within the district to assist the district attorney's office by employing and paying the salary of not more than one employee of the district attorney's office. Such employee shall be deemed appointed and employed by the board of supervisors with approval of the district attorney. Young, June 21, 1996, A.G. Op. #96-0388.

A district attorney may expend bad check funds to supplement the salary of a secretary, subject to any statutory maximum. Mitchell, Aug. 27, 2004, A.G. Op. 04-0420.

Section 25-31-8 authorizes the county board of supervisors to assist in the funding of the district attorney's office, which would include the District Attorney's worthless check unit. Wayne County Board of Supervisors, Oct. 13, 2006, A.G. Op. 06-0468.

§ 25-31-10. Criminal investigators.

[Effective until January 1, 2023, this section shall read as follows:]

(1) Any district attorney may appoint a full-time criminal investigator.

(2) The district attorneys of the Third, Fifth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth and Twentieth Circuit Court Districts may appoint one (1) additional full-time criminal investigator for a total of two (2) full-time criminal investigators.

(3) The district attorneys of the First, Second, Fourth, Seventh and Nineteenth Circuit Court Districts may appoint two (2) additional full-time criminal investigators for a total of three (3) full-time criminal investigators.

(4) No district attorney or assistant district attorney shall accept any private employment, civil or criminal, in any matter investigated by such criminal investigators.

(5) The full and complete compensation for all public duties rendered by said criminal investigators shall be not more than Fifty-nine Thousand Five Hundred Dollars ($59,500.00) per annum, to be determined at the discretion of the district attorney based upon the qualifications, education and experience of the criminal investigator, plus necessary travel and other expenses, to be paid in accordance with Section 25-31-8. However, the maximum salary under this subsection for a criminal investigator who has a law degree may be supplemented by the district attorney from other available funds, but not to exceed the maximum salary for a legal assistant to a district attorney.

(6) Any criminal investigator may be designated by the district attorney to attend the Law Enforcement Officers Training Program set forth in Section 45-6-1 et seq., Mississippi Code of 1972. The total expenses associated with attendance by criminal investigators at the Law Enforcement Officers Training Program shall be paid out of the funds of the appropriate district attorney.

(7) The district attorney shall be authorized to assign the duties of criminal investigators regardless of the source of funding for such criminal investigators.

[Effective from and after January 1, 2023, this section shall read as follows:]

(1) Any district attorney may appoint a full-time criminal investigator.

(2) The district attorneys of the Third, Fifth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Twentieth and Twenty-third Circuit Court Districts may appoint one (1) additional full-time criminal investigator for a total of two (2) full-time criminal investigators.

(3) The district attorneys of the First, Second, Fourth, Seventh and Nineteenth Circuit Court Districts may appoint two (2) additional full-time criminal investigators for a total of three (3) full-time criminal investigators.

(4) No district attorney or assistant district attorney shall accept any private employment, civil or criminal, in any matter investigated by such criminal investigators.

(5) The full and complete compensation for all public duties rendered by the criminal investigators shall be not more than Fifty-nine Thousand Five Hundred Dollars ($59,500.00) per annum, to be determined at the discretion of the district attorney based upon the qualifications, education and experience of the criminal investigator, plus necessary travel and other expenses, to be paid in accordance with Section 25-31-8. However, the maximum salary under this subsection for a criminal investigator who has a law degree may be supplemented by the district attorney from other available funds, but not to exceed the maximum salary for a legal assistant to a district attorney.

(6) Any criminal investigator may be designated by the district attorney to attend the Law Enforcement Officers Training Program set forth in Section 45-6-1 et seq. The total expenses associated with attendance by criminal investigators at the Law Enforcement Officers Training Program shall be paid out of the funds of the appropriate district attorney.

(7) The district attorney shall be authorized to assign the duties of criminal investigators regardless of the source of funding for such criminal investigators.

HISTORY: Laws, 1974, ch. 536, § 1; Laws, 1977, ch. 453, § 4; Laws, 1978, ch. 509, § 8; Laws, 1981, ch. 522, § 2; Laws, 1988, ch. 522; Laws, 1993, ch. 550, § 8; Laws, 1993, ch. 590, § 1; Laws, 1994, ch. 616, § 1; Laws, 1996, ch. 494, § 1; Laws, 1997, ch. 303, § 1; Laws, 1999, ch. 581, § 4; Laws, 2003, ch. 563, § 4; Laws, 2006, ch. 548, § 3; Laws, 2007, ch. 558, § 2; Laws, 2009, ch. 455, § 3, eff from and after July 1, 2009; Laws, 2020, ch. 474, § 2, eff from and after July 1, 2020.

Editor's Notes — Laws of 2020, ch. 474, §§ 8-10, effective July 1, 2020, provide:

"SECTION 8. (1) The new circuit judge position created for the Twenty-third Circuit Court District by virtue of this act shall be filled during the November 2022 judicial election in accordance with Sections 23-15-974 through 23-15-985.

"(2)(a) The office of district attorney for the Twenty-third Circuit Court District created by virtue of this act shall be filled by the person who holds the office of district attorney for the Seventeenth Circuit Court District on December 31, 2022. Such person shall serve as the district attorney for the Twenty-third Circuit Court District until a successor for such office is elected in the November 2023 general election. Notwithstanding any other provision of law to the contrary regarding residency of candidates for the office of district attorney, the person serving as the district attorney for the Seventeenth Circuit Court District as of December 31, 2022, may qualify as a candidate to run for the office of district attorney for the Twenty-third Circuit Court District in the November 2023 general election, if such person is otherwise qualified as a candidate as provided by law.

"(b) The vacancy created by virtue of paragraph (a) of this subsection (2) for the office of district attorney for the Seventeenth Circuit Court District shall be filled by special election on the date set for judicial elections in November 2022, with such person taking office as district attorney for the Seventeenth Circuit Court District on January 1, 2023, for a term to expire as is provided for district attorneys generally. The date and deadline to qualify as a candidate in the special election for such office shall be the same as for judicial candidates for the November 2022 judicial elections.

"(3) The new chancellorship position created for the Third Chancery Court District by virtue of this act shall be filled during the November 2026 judicial election in accordance with Sections 23-15-974 through 23-15-985.

"SECTION 9. Monies appropriated for the purposes of funding drug courts in the Seventeenth and the Twenty-third Circuit Court Districts as described in this act shall be apportioned equally.

"SECTION 10. Sections 3 and 4 of this act shall take effect and be in force from and after January 1, 2023, and the remainder of this act shall take effect and be in force from and after July 1, 2020."

Amendment Notes — The 2020 amendment provided for two versions of the section, and in the version effective from and after January 1, 2023, in (2), inserted "and Twenty-third" and made a related change; in (6), deleted "Mississippi Code of 1972" following "Section 45-6-1 et seq."; and made a minor stylistic change.

OPINIONS OF THE ATTORNEY GENERAL

Bad check funds may be used to supplement salary of victim assistance coordinator and criminal investigators subject to statutory maximum. Lampton, July 14, 1993, A.G. Op. #93-0445.

A criminal investigator with a law degree and license may not appear in court as an attorney on behalf of the state. Richardson, Dec. 10, 2004, A.G. Op. 04-0616.

§ 25-31-11. Powers and duties.

(1) It shall be the duty of the district attorney to represent the state in all matters coming before the grand juries of the counties within his district and to appear in the circuit courts and prosecute for the state in his district all criminal prosecutions and all civil cases in which the state or any county within his district may be interested; but if two (2) or more counties are adversely interested, the district attorney shall not represent either. Any district attorney may also institute and prosecute to final judgment or decree any case in the name of the state against any person or corporation for any violation of the Constitution or the laws of this state, in order to enforce any penalties, fines or forfeitures imposed by law in any court of his district having jurisdiction, with like effect as if the suit was instituted by the Attorney General. Any district attorney may also institute and prosecute to final judgment or decree any case in which prosecution was deferred due to a finding that the defendant was incompetent to stand trial if the case is otherwise triable.

(2) The district attorney may transfer any case handled by him to a county prosecuting attorney when charges in such case no longer constitute a felony.

(3) The validity of any judgment or sentence shall not be affected by the division of jurisdiction under this section, and no judgment or sentence may be reversed or modified upon the basis that the case was not processed according to this section.

(4) A county prosecuting attorney or municipal prosecuting attorney may be designated by the district attorney to appear on behalf of the district attorney pursuant to an agreement relating to appearances in certain courts or proceedings in the county of the county prosecuting attorney or in the municipality of the municipal prosecuting attorney. Such agreement shall be filed with the circuit court clerk of any county where such agreement shall be operative. Such agreement shall be binding upon the district attorney and county prosecuting attorney or municipal prosecuting attorney until dissolved by either of them in writing upon five (5) days' notice.

(5) Where any statute of this state confers a jurisdiction, responsibility, duty, privilege or power upon a county attorney or county prosecuting attorney, either solely, jointly or alternatively with a district attorney, such county prosecuting attorney shall be responsible for the prosecution, handling, appearance, disposition or other duty conferred by such statute. Any such provision shall not be construed to bestow such responsibility, jurisdiction or power upon the district attorney where there is no elected county prosecuting attorney, and any such matter shall be handled pursuant to Section 19-3-49, Mississippi Code of 1972.

(6) The district attorney or his designated assistant, or the county prosecuting attorney or his designated assistant, shall assist the Attorney General in appeals from his district to the Mississippi Supreme Court and in other post judgment proceedings, and shall appear for oral argument before the Supreme Court when directed by the Supreme Court.

(7) The several district attorneys shall submit reports of revenues and expenditures and shall submit budget requests as required for State General Fund agencies. For purposes of budget control, the several offices of district attorney shall be considered General Fund agencies and the budget and accounts of the several offices, including salaries, travel expenses, office expenses and any other expenditures or revenues, shall be consolidated for all districts as far as such consolidation is practical.

All revenue or funds allocated or expended by a district attorney, whether such funds are appropriated from state funds, or whether such funds are received from county funds, grants or otherwise, shall be reported to the Legislative Budget Office.

(8) A district attorney shall be authorized to assign the duties of employees regardless of the source of funding for such employees.

HISTORY: Codes, Hutchinson's 1848, ch. 22, art 3 (4); 1857, ch. 6, art 70; 1871, § 214; 1880, § 256; 1892, § 1555; 1906, § 1661; Hemingway's 1917, § 1398; 1930, § 4363; 1942, § 3920; Laws, 1978, ch. 509, § 9; Laws, 1979, ch. 490, § 2; Laws, 1984, ch. 488, § 175; Laws, 2009, ch. 455, § 4, eff from and after July 1, 2009; Laws, 2019, ch. 468, § 21, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added the last sentence of (1).

OPINIONS OF THE ATTORNEY GENERAL

Inherent in district attorney's authority to hire victim assistance coordinator is authority to set coordinator's salary; senior circuit court judge is only to determine pro rata share of salary to be paid by counties. Mellen, July 22, 1992, A.G. Op. #92-0538.

County prosecuting attorney may represent county in civil forfeiture proceedings; compensation to be paid to county attorney for such services would have to be included in county attorney's salary. Swayze Sept. 7, 1993, A.G. Op. #93-0533.

Although there is authority for a municipal prosecutor to appear on behalf of the district attorney, pursuant to agreement, the rule does not operate in reverse. Lampton, March 17, 1995, A.G. Op. #95-0127.

§ 25-31-21. Pro tempore appointment and compensation of appointees.

JUDICIAL DECISIONS

1. In general.

Trial court did not err by appointing the attorney general as special prosecutor in defendant's case because it articulated its reasons for disqualifying the district attorney, the charges against him for allegedly violating this section by improperly consulting, advising, counseling and defending defendant, the record reflected no evidence that defendant ever objected to the attorney general's appointment, and the trial court found not merit to the district attorney's objection based on a conflict of interest. Butler v. State, 292 So. 3d 251, 2019 Miss. App. LEXIS 460 (Miss. Ct. App. 2019), cert. denied, 290 So. 3d 753, 2020 Miss. LEXIS 102 (Miss. 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 174 (Miss. 2020).

§ 25-31-35. District attorneys shall not engage in private practice; exception.

OPINIONS OF THE ATTORNEY GENERAL

Sections 25-31-35 and 25-31-36 are not violated simply by receiving a fee for services rendered prior to becoming District Attorney. Webb, November 1, 1996, A.G. Op. #96-0626. Pacific, November 1, 1996, A.G. Op. #96-0735.

A special prosecutor appointed pursuant to court order may represent criminal defendants in counties outside the circuit court district in which he is specially appointed. Peters, October 9, 1998, A.G. Op. #98-0618.

It is the intent of the legislature that a legal assistant to a district attorney devote his legal talents exclusively to the district attorney and the people of the district in which he serves. Bates, Oct. 31, 2003, A.G. Op. 03-0518.

§ 25-31-36. Right of district attorney to conclude civil cases pending at time of taking office; practice by appointees pending filling of vacancy by election.

OPINIONS OF THE ATTORNEY GENERAL

Sections 25-31-35 and 25-31-36 are not violated simply by receiving a fee for services rendered prior to becoming District Attorney. Webb, November 1, 1996, A.G. Op. #96-0626. Pacific, November 1, 1996, A.G. Op. #96-0735.

It is the intent of the legislature that a legal assistant to a district attorney devote his legal talents exclusively to the district attorney and the people of the district in which he serves. Bates, Oct. 31, 2003, A.G. Op. 03-0518.

§ 25-31-39. Abolition of part-time district attorneys and part-time legal assistants; exception.

OPINIONS OF THE ATTORNEY GENERAL

A special prosecutor appointed pursuant to court order may represent criminal defendants in counties outside the circuit court district in which he is specially appointed. Peters, October 9, 1998, A.G. Op. #98-0618.

CHAPTER 32.

PUBLIC DEFENDERS

IN GENERAL

§ 25-32-1. Establishment of office by board of supervisors.

OPINIONS OF THE ATTORNEY GENERAL

Under Sections 25-32-1 and 25-32-3, the board of supervisors may establish a public defender's office with a part-time public defender and a part-time assistant public defender. However, it shall be the duty of the public defender to select and appoint any assistant public defenders authorized by the board of supervisors. Chamberlin, September 7, 1995, A.G. Op. #95-0611.

If a county has established an office of public defender under § 25-32-1 et seq., a justice court judge has the authority to order the public defender to represent an indigent criminal defendant on a misdemeanor charge that may lead to the defendant being incarcerated. Rushing, November 25, 1998, A.G. Op. #98-0711.

The Code of Judicial Conduct prohibits a person from simultaneously serving as a justice court judge and public defender. Norquist, Sept. 27, 2002, A.G. Op. #02-0556.

Part-time public defenders are county employees and afforded coverage under the Tort Claims Act while acting in the course and scope of their employment. Starrett, Aug. 1, 2003, A.G. Op. 03-0383.

The determination of whether a county has established an office of public defender in accordance with Section 25-32-1 can be made by examining the minutes of the board of supervisors. Robertson, July 25, 2006, A.G. Op. 06-0293.

There is no statutory requirement that a county register its office of public defender with a central organization, association or agency. Robertson, July 25, 2006, A.G. Op. 06-0293.

A duly appointed public defender would be considered an appointed county officer. Robertson, July 25, 2006, A.G. Op. 06-0293.

Assistant public defenders, appointed in accordance with Section 25-32-3, who are paid a regular salary by the county, monthly or otherwise, would be considered county employees. Robertson, July 25, 2006, A.G. Op. 06-0293.

§ 25-32-3. Circuit judge shall appoint public defender for county; assistant public defender.

OPINIONS OF THE ATTORNEY GENERAL

Duly appointed public defender may not delegate his or her duties and responsibilities to any other than duly and lawfully appointed assistant public defender. McDaniel, Nov. 12, 1992, A.G. Op. #92-0848.

Under Sections 25-32-1 and 25-32-3, the board of supervisors may establish a public defender's office with a part-time public defender and a part-time assistant public defender. However, it shall be the duty of the public defender to select and appoint any assistant public defenders authorized by the board of supervisors. Chamberlin, September 7, 1995, A.G. Op. #95-0611.

If the board of supervisors authorizes additional assistant public defenders, they are to be appointed by the public defender and the public defender has the authority to establish the duties and responsibilities of each assistant public defender to include who will be responsible for handling misdemeanor cases and/or preliminary hearings in justice court; there is no statutory authority for two separate county public defenders, one for circuit court and one for justice court. Haney, June 6, 2003, A.G. Op. 03-0261.

§ 25-32-9. Affidavit of indigency; statement of assets; representation of persons in need of mental treatment.

OPINIONS OF THE ATTORNEY GENERAL

An indigent defendant charged with a misdemeanor is entitled to legal representation by the public defender where a substantial right may be affected, e.g., when the defendant faces imprisonment for any length of time. Belk, Jr., June 30, 2000, A.G. Op. #2000-0360.

The determination of whether a county has established an office of public defender in accordance with Section 25-32-1 can be made by examining the minutes of the board of supervisors. Robertson, July 25, 2006, A.G. Op. 06-0293.

§ 25-32-11. Duties; free access to accused.

OPINIONS OF THE ATTORNEY GENERAL

When indigent defendant charged with felony appears for preliminary hearing before municipal judge, it is case 'originating in state and county courts' thereby requiring county public defender to appear and represent defendant. Brown, Jan. 20, 1994, A.G. Op. #93-0896.

Since county public defenders are required to represent indigent defendants charged with felonies at preliminary hearings in municipal court, city is under no obligation to compensate public defender; county that appointed public defender would be responsible for such compensation. Brown, Jan. 20, 1994, A.G. Op. #93-0896.

Section 25-32-11 provides that it is the duty of the county public defender to represent an indigent defendant at a preliminary hearing before a municipal judge. Thompson, October 11, 1996, A.G. Op. #96-0678.

When a county public defender is appointed to represent a defendant on felony charges in a municipal court preliminary hearing, the court should allow the public defender to withdraw if the felony charges are reduced to misdemeanors, the court should then determine if a court appointed attorney is appropriate on the misdemeanor charges, and if the public defender is appointed to represent the defendant on the misdemeanor charges, then the public defender is entitled to additional compensation from the municipality under Miss. Code Section 99-15-17. Tucker, Aug. 15, 1997, A.G. Op. #97-0500.

CHAPTER 33.

NOTARIES PUBLIC

Sec.
25-33-1 through 25-33-33. Repealed.

§§ 25-33-1 through 25-33-33. Repealed.

Repealed by Laws of 2020, ch. 382, § 35, effective July 1, 2021.

§ 25-33-1. [Codes, 1880, § 426; 1892, § 3040; 1906, § 3447; Hemingway's 1917, § 2780; 1930, § 2858; 1942, § 4016; Laws, 1904, ch. 159; Laws, 1926, ch. 190; Laws, 1981, ch. 426, § 1; Laws, 1988, ch. 456, § 1; Laws, 2007, ch. 427, § 1, eff from and after July 1, 2007.]

§ 25-33-3. [Codes, 1892, § 3041; 1906, § 3448; Hemingway's 1917, § 2781; 1930, § 2859; 1942, § 4017; Laws, 1928, ch. 24; Laws, 1981, ch. 426, § 2; Laws, 1988, ch. 456, § 2, eff from and after July 1, 1988.]

§ 25-33-5. [Codes, 1880, § 429; 1892, § 3042; 1906, § 3449; Hemingway's 1917, § 2782; 1930, § 2860; 1942, § 4018.]

§ 25-33-7. [Codes, 1880, § 430; 1892, § 3043; 1906, § 3450; Hemingway's 1917, § 2783; 1930, § 2861; 1942, § 4019; Laws, 1981, ch. 426, § 3; Laws, 1988, ch. 456, § 3, eff from and after July 1, 1988.]

§ 25-33-9. [Codes, 1880, § 427; 1892, § 3044; 1906, § 3451; Hemingway's 1917, § 2784; 1930, § 2862; 1942, § 4020; Laws, 1974, ch. 387; Laws, 2002, ch. 354, § 1, eff from and after July 1, 2002.]

§ 25-33-11. [Codes, 1880, § 428; 1892, § 3045; 1906, § 3452; Hemingway's 1917, § 2785; 1930, § 2863; 1942, § 4021; Laws, 1981, ch. 426, § 4; Laws, 1988, ch. 456, § 4; Laws, 2002, ch. 354, § 2, eff from and after July 1, 2002.]

§ 25-33-13. [Codes, 1942, § 4021-01; Laws, 1944, ch. 325, §§ 1, 2, eff May 1, 1944.]

§ 25-33-15. [Codes, 1880, § 431; 1892, § 3046; 1906, § 3453; Hemingway's 1917, § 2786; 1930, § 2864; 1942, § 4022.]

§ 25-33-17. [Codes, 1880, § 425; 1892, § 3047; 1906, § 3454; Hemingway's 1917, § 2787; 1930, § 2865; 1942, § 4023; Laws, 1981, ch. 426, § 5; Laws, 1988, ch. 456, § 5, eff from and after July 1, 1988.]

§ 25-33-19. [Codes, 1880, § 432; 1892, § 3048; 1906, § 3455; Hemingway's 1917, § 2788; 1930, § 2866; 1942, § 4024; Laws, 1988, ch. 456, § 6, eff from and after July 1, 1988.]

§ 25-33-21. [Codes, Hemingway's 1921 Supp. § 2788a; 1930, § 2867; 1942, § 4025; Laws, 1918, ch. 227.]

§ 25-33-23. [Codes, 1942, § 4025-01; Laws, 1946, ch 308; Laws, 1954, ch 247.]

§ 25-33-25. [Laws, 2004, ch. 464, § 1, eff from and after July 1, 2004.]

§ 25-33-27. [Laws, 2004, ch. 464, § 2, eff from and after July 1, 2004.]

§ 25-33-29. [Laws, 2004, ch. 464, § 3, eff from and after July 1, 2004.]

§ 25-33-31. [Laws, 2004, ch. 464, § 4, eff from and after July 1, 2004.]]

§ 25-33-33. [Laws, 2007, ch. 427, § 2, eff from and after July 1, 2007.]

Editor's Note — For present provisions relating to notarial acts, see Chapter 34 of this title, § 25-34-1 et seq.

Former § 25-33-1 related to the appointment, bond, oath and qualifications of notaries public.

Former § 25-33-3 required notaries public to procure notarial seals.

Former § 25-33-5 required notaries public to keep a register of all official acts.

Former § 25-33-7 related to the disposal of register and papers upon the death, resignation, disqualification or expiration of the term of office of a notary public.

Former § 25-33-9 authorized notaries public to administer oaths and affirmations.

Former § 25-33-11 related to the powers and duties of notaries public.

Former § 25-33-13 required notaries to affix to written or printed certificates of acknowledgment, his official seal and signature, and date commission expires.

Former § 25-33-15 required notaries public to record in register a protest of a bill or note.

Former § 25-33-17 related to ex officio notaries public.

Former § 25-33-19 required county boards of supervisors to provide a common notarial seal to be kept in the office of the clerk of the circuit court for use by all ex officio notaries public.

Former § 25-33-21 authorized notaries public who are stockholders, directors or employees of a bank or other corporation to take the acknowledgments of any parties to written instruments to or by that corporation, or to administer oaths to any other stockholders, directors or employees of the corporation.

Former § 25-33-23 related to notarial acts of commissioned officers of the U.S. armed forces.

Former § 25-33-25 required notaries public who are not attorneys to include in any advertisements regarding their services as notary a statement to that they are not an attorney.

Former § 25-33-27 prohibited certain representations or advertisements by notaries who are not attorneys.

Former § 25-33-29 excepted certain notary services from the provisions of Sections 25-33-25 through 25-33-31.

Former § 25-33-31 provided penalties for violations of Sections 25-33-25 through 25-33-29.

Former § 25-33-33 authorized the Secretary of State to prescribe forms and establish fees for services not otherwise provided by law.

CHAPTER 34.

REVISED MISSISSIPPI LAW ON NOTARIAL ACTS

Sec.

25-34-1. Short title.
25-34-3. Definitions.
25-34-5. Applicability.
25-34-7. Authorized notarial acts; limitation on performance of notarial acts.
25-34-9. Fees for notarial services.
25-34-11. Personal knowledge of or satisfactory evidence of identity of person before notarial officer required.
25-34-13. Personal knowledge of identity and satisfactory evidence of identity of individual appearing before officer defined.
25-34-15. Physical presence required for person making statement in or executing signature on record.
25-34-17. Refusal by notarial officer to perform notarial act.
25-34-19. Individual physically unable to sign a record may direct another to sign on individual's behalf.
25-34-21. Persons who may perform notarial acts.
25-34-23. Effect of notarial act performed in another state.
25-34-25. Effect of notarial act performed under authority and in jurisdiction of federally recognized Indian tribe.
25-34-27. Effect of notarial act performed under federal law.
25-34-29. Effect of notarial act performed under authority and in jurisdiction of foreign state.
25-34-31. Notarial act to be evidenced by certificate; certificate requirements; sufficiency of certificate.
25-34-33. Official notary public seal to be procured by every commissioned notary public and provided by every county board of supervisors; destruction of seal upon death or adjudication of incompetency of notary public.

Sec.
25-34-35. Security of notary public's stamping device.
25-34-37. Maintenance of journal by notary public chronicling all notarial acts; performance of notarial act and entry must be contemporaneous; entry information.
25-34-39. Notarial acts with respect to electronic records.
25-34-41. Qualifications of applicant for commission as no- tary public; oath of office; surety bond; term of com- mission; authority provided by commission.
25-34-43. Denial, refusal to renew, revocation, suspension or imposition of condition on commission for certain reasons; appeal.
25-34-45. Electronic database of notaries public.
25-34-47. Limitation on authorization provided by commission as notary public; certain restrictions; penalties for violation.
25-34-49. Validity of notarial act.
25-34-51. Secretary of State may adopt rules and regulations to implement chapter.
25-34-53. Commission as notary public in effect on July 1, 2021, continues to expiration; compliance with chapter by notaries public on or after July 1, 2021.
25-34-55. Validity of notarial acts performed before July 1, 2021, not affected by this chapter.
25-34-57. Relation to Electronic Signatures in Global and National Commerce Act.

§ 25-34-1. Short title.

This chapter shall be known and may be cited as the "Revised Mississippi Law on Notarial Acts."

HISTORY: Laws, 2020, ch. 382, § 1, eff from and after July 1, 2021.

§ 25-34-3. Definitions.

As used in this chapter, the following words and phrases have the meanings ascribed in this section unless the context clearly requires otherwise:

(a) "Acknowledgment" means a declaration by an individual in person before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.

(b) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(c) "Electronic signature" means an electronic symbol, sound or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

(d) "In a representative capacity" means acting as:

(i) An authorized officer, manager, member, agent, partner, trustee or other representative for a person other than an individual;

(ii) A public officer, personal representative, guardian or other representative, in the capacity stated in a record;

(iii) An agent or attorney-in-fact for a principal; or

(iv) An authorized representative of another in any other capacity.

(e) "Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under this chapter and any other law of this state.

(f) "Notarial officer" means a notary public or other individual authorized to perform a notarial act.

(g) "Notary public" means an individual commissioned to perform a notarial act by the Secretary of State.

(h) "Official seal" means a physical image affixed to a tangible record or an electronic image attached to or logically associated with an electronic record.

(i) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(j) "Sign" means, with present intent to authenticate or adopt a record:

(i) To execute or adopt a tangible symbol; or

(ii) To attach to or logically associate with the record an electronic symbol, sound or process.

(k) "Signature" means a tangible symbol or an electronic signature that evidences the signing of a record.

(*l*) "Stamping device" means:

(i) A physical device capable of affixing to a tangible record an official seal; or

(ii) An electronic device or process capable of attaching to or logically associating an official seal with an electronic record.

(m) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(n) "Verification on oath or affirmation," formerly known as a jurat, means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

HISTORY: Laws, 2020, ch. 382, § 2, eff from and after July 1, 2021.

§ 25-34-5. Applicability.

This chapter applies to a notarial act performed on or after July 1, 2021.

HISTORY: Laws, 2020, ch. 382, § 3, eff from and after July 1, 2021.

§ 25-34-7. Authorized notarial acts; limitation on performance of notarial acts.

(1) A notarial officer may perform the following notarial acts:

(a) Take acknowledgments;

(b) Administer oaths and affirmations;

(c) Take verifications on oath or affirmation;

(d) Certify depositions of witnesses;

(e) Witness or attest signatures;

(f) Make or note a protest of a negotiable instrument;

(g) Make an affidavit regarding the truth of any witnesses or attested signatures in question along with any corrected language and, if the authenticity or correctness of language affects real property, file the same in the land records in the office of the chancery clerk where the land is located; and

(h) Any other acts so authorized by the law of this state.

(2) A notarial officer may not perform a notarial act when the officer:

(a) Is a party to the record being notarized;

(b) Is a spouse, child, sibling, parent, grandparent, grandchild, aunt or uncle, or niece or nephew, including a son or daughter-in-law, a mother or father-in-law, a stepchild or stepparent, or a half-sibling, of the person whose signature is being notarized or the person taking a verification on oath or affirmation from the officer; or

(c) Will receive as a direct result any commission, fee, advantage, right, title, beneficial interest, cash, property or other consideration exceeding in value the fees required by rules established by the Secretary of State.

(3) A notarial officer is not disqualified from performing a notarial act by virtue of his or her profession when the officer:

(a) Is an employee performing a notarial act on behalf of, or which benefits, the employer;

(b) Is an attorney who maintains an attorney-client relationship with the person whose signature is the subject of the notarial act; or

(c) Is a shareholder of a corporation or member of a limited liability company which is a party to a record that is the subject of the notarial act.

(4) A notarial act performed in violation of subsection (2) is voidable.

HISTORY: Laws, 2020, ch. 382, § 4, eff from and after July 1, 2021.

§ 25-34-9. Fees for notarial services.

A notarial officer may charge a fee in an amount not to exceed Five Dollars ($5.00) for services rendered unless otherwise prohibited by law or by rules promulgated by the Secretary of State.

HISTORY: Laws, 2020, ch. 382, § 5, eff from and after July 1, 2021.

§ 25-34-11. Personal knowledge of or satisfactory evidence of identity of person before notarial officer required.

(1) A notarial officer who takes an acknowledgment of a record, takes a verification of a statement on oath or affirmation (jurat), or witnesses or attests to a signature, must determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing in

person before the officer has the identity claimed and that the signature on the record is the signature of the individual.

(2) A notarial officer who makes or notes a protest of a negotiable instrument must determine the matters set forth in Section 75-3-505(b).

HISTORY: Laws, 2020, ch. 382, § 6, eff from and after July 1, 2021.

§ 25-34-13. Personal knowledge of identity and satisfactory evidence of identity of individual appearing before officer defined.

(1) A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is known personally to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(2) A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual by means of inspecting:

(a) An unexpired passport, an unexpired driver's license or a driver's license that has not been expired for more than five (5) years, a government-issued nondriver identification card, a Mississippi voter ID card or an unexpired photographic identification card issued by a federally recognized Indian tribe or nation; or

(b) Another form of government identification issued to an individual which is not expired, contains the signature and a photograph of the individual, and is satisfactory to the officer.

(3) A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the officer of the identity of the individual.

HISTORY: Laws, 2020, ch. 382, § 8, eff from and after July 1, 2021.

§ 25-34-15. Physical presence required for person making statement in or executing signature on record.

If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature must appear physically in person before the notarial officer at the time of the notarial act.

HISTORY: Laws, 2020, ch. 382, § 7, eff from and after July 1, 2021.

§ 25-34-17. Refusal by notarial officer to perform notarial act.

(1) A notarial officer may refuse to perform a notarial act if the officer knows or suspects the transaction is illegal, false or deceptive, or if the officer is not satisfied that:

(a) The individual executing the record is competent;

(b) The individual executing the record has the capacity to execute the record;

(c) The individual's signature is knowingly and voluntarily made; or

(d) The notarial act is in compliance with this chapter or with rules issued by the Secretary of State to implement this chapter.

(2) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by any law other than this chapter.

(3) A notary may not be required to perform a notarial act outside the notary's regular workplace or business hours.

HISTORY: Laws, 2020, ch. 382, § 9, eff from and after July 1, 2021.

§ 25-34-19. Individual physically unable to sign a record may direct another to sign on individual's behalf.

If an individual is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name on the record. The notarial officer shall insert "Signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar import.

HISTORY: Laws, 2020, ch. 382, § 10, eff from and after July 1, 2021.

§ 25-34-21. Persons who may perform notarial acts.

(1) A notarial act may be performed in this state by:

(a) A notary public of this state;

(b) An elected judge, a clerk or deputy clerk of a court of this state; or

(c) The Mississippi Secretary of State or a Mississippi Assistant Secretary of State.

(2) The signature and title of an individual performing a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notarial officer described in subsection (1) conclusively establish the authority of the officer to perform the notarial act.

HISTORY: Laws, 2020, ch. 382, § 11, eff from and after July 1, 2021.

§ 25-34-23. Effect of notarial act performed in another state.

(1) A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in that state is performed by:

(a) A notary public of that state;

(b) A judge, a clerk or a deputy clerk of a court of that state; or

(c) Any other individual authorized by the law of that state to perform the notarial act.

(2) The signature and title of an individual performing a notarial act in

another state is prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notarial officer described in subsection (1)(a) or (b) conclusively establish the authority of the officer to perform the notarial act.

HISTORY: Laws, 2020, ch. 382, § 12, eff from and after July 1, 2021.

§ 25-34-25. Effect of notarial act performed under authority and in jurisdiction of federally recognized Indian tribe.

(1) A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect under the laws of this state as if performed by a notarial officer of this state, if the act performed in the jurisdiction of the tribe is performed by:

(a) A notary public authorized by the tribe;

(b) A judge, a clerk or a deputy clerk of a court of that tribe; or

(c) Any other individual authorized by the law of the tribe to perform the notarial act.

(2) The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized Indian tribe is prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notarial officer described in subsection (1)(a) or (b) conclusively establish the authority of the officer to perform the notarial act.

HISTORY: Laws, 2020, ch. 382, § 13, eff from and after July 1, 2021.

§ 25-34-27. Effect of notarial act performed under federal law.

(1) A notarial act performed under federal law has the same effect under the laws of this state as if performed by a notarial officer of this state, if the act performed under federal law is performed by:

(a) A judge, clerk or deputy clerk of a court;

(b) An individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;

(c) An individual designated a notarizing officer by the United States Department of State for performing notarial acts overseas; or

(d) Any other individual authorized by federal law to perform the notarial act.

(2) The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of an officer described in subsection (1)(a), (b)

or (c) conclusively establish the authority of the officer to perform the notarial act.

HISTORY: Laws, 2020, ch. 382, § 14, eff from and after July 1, 2021.

§ 25-34-29. Effect of notarial act performed under authority and in jurisdiction of foreign state.

(1) In this section, "foreign state" means a government other than the United States, a state of the United States or a federally recognized Indian tribe.

(2) If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as though performed by a notarial officer of this state.

(3) If the title of office and indication of authority to perform notarial acts in a foreign state appears in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is established conclusively.

(4) The signature and official seal of an individual holding an office described in subsection (3) are prima facie evidence that the signature is genuine and the individual holds the designated title.

(5) An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the Convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(6) A consular authentication issued by an individual designated by the United States Department of State as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

HISTORY: Laws, 2020, ch. 382, § 15, eff from and after July 1, 2021.

§ 25-34-31. Notarial act to be evidenced by certificate; certificate requirements; sufficiency of certificate.

(1) A notarial act must be evidenced by a certificate. The certificate must:

(a) Be executed contemporaneously with the performance of the notarial act;

(b) Be signed and dated by the notarial officer and, if the notarial officer is a notary public, be signed in the same manner as on file with the Secretary of State;

(c) Identify the jurisdiction in which the notarial act is performed;

(d) Contain the title of office of the notarial officer; and

(e) If the notarial officer is a notary public, indicate the date of expiration of the notary public's commission.

(2) If a notarial act regarding a tangible record is performed by a notary public, the notary public's official seal must be affixed to the certificate. If a notarial act is performed regarding a tangible record by a notarial officer other than a notary public and the certificate contains the information specified in subsection (1)(b), (c) and (d), the notarial officer's official seal may be affixed to the certificate. If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in subsection (1)(b), (c) and (d), the notarial officer's official seal may be attached to or logically associated with the certificate.

(3) The party drafting a record that is the subject of a notarial act is responsible for the form of the certificate, its wording and legal sufficiency. A notary public is not required to draft, edit or amend a certificate where the record presented does not contain an acceptable certificate; instead, the notary must refuse to perform the notarial act with respect to the record.

(4) A certificate of a notarial act is sufficient if it meets the requirements of subsections (1) and (2) and:

(a) Is in a form otherwise permitted by the law of this state;

(b) Is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed; or

(c) Sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in Sections 25-34-7, 25-34-9, 25-34-11 and 25-34-15 or any law of this state other than this chapter.

(5) By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in Sections 25-34-7, 25-34-9, 25-34-11 and 25-34-15.

(6) A notarial officer may not affix the officer's signature to, or logically associate it with, a certificate until the notarial act has been performed.

(7) If a notarial act is performed regarding a tangible record, a certificate must be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate must be affixed to, or logically associated with, the electronic record. If the Secretary of State has established standards under Section 25-34-39 for attaching, affixing or logically associating the certificate, the process must conform to those standards.

(8) The signature of a notarial officer certifying a notarial act may not be deemed evidence to show that the notarial officer had knowledge of the contents of the record so signed, other than those specific contents which constitute the signature, execution, acknowledgment, oath, affirmation, affidavit, verification or other act which the signature of that notarial officer chronicles.

HISTORY: Laws, 2020, ch. 382, § 16, eff from and after July 1, 2021.

§ 25-34-33. Official notary public seal to be procured by every commissioned notary public and provided by every county board of supervisors; destruction of seal upon death or adjudication of incompetency of notary public.

(1) Every notary public appointed and commissioned must procure, at his own expense, a suitable official seal. The official seal of a notary public must:

(a) Include the notary public's name, jurisdiction, commission expiration date and other information required by the Secretary of State; and

(b) Be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

(2) The board of supervisors of every county must provide an official seal, with the inscription "notary public" around the margin and the image of an eagle in the center, which official seal must be kept in the office of the clerk of the circuit court. A judge, chancellor, clerk or deputy clerk of a court of this state, the Mississippi Secretary of State or an Assistant Secretary of State of this state may use the official seal to perform a notarial act under Section 25-34-19(1)(b) or (c).

(3) On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the official seal shall destroy or deface, as soon as reasonably practicable, all official seals of the notary public so that they may not be misused.

HISTORY: Laws, 2020, ch. 382, § 17, eff from and after July 1, 2021.

§ 25-34-35. Security of notary public's stamping device.

(1) A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act. On resignation from, or the revocation or expiration of, the notary public's commission, or on the expiration of the date set forth in the stamping device, if any, the notary public must disable the stamping device by destroying, defacing, damaging, erasing or securing it against use in a manner that renders it unusable. On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the stamping device must render it unusable by destroying, defacing, damaging, erasing or securing it against use in a manner that renders it unusable.

(2) If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian must notify promptly the Secretary of State upon discovery that the device is lost or stolen.

HISTORY: Laws, 2020, ch. 382, § 18, eff from and after July 1, 2021.

§ 25-34-37. Maintenance of journal by notary public chronicling all notarial acts; performance of notarial act and entry must be contemporaneous; entry information.

(1) A notary public must maintain a journal in which the notary public chronicles all notarial acts that the notary public performs.

(2) A journal must be created on a tangible or electronic medium. A notary public shall maintain only one (1) journal at a time to chronicle all notarial acts, whether those notarial acts are performed regarding tangible or electronic records. If the journal is tangible, it must be a permanent, bound register with numbered pages. An electronic journal must conform to specifications set forth in rules by the Secretary of State.

(3) An entry in a journal must be made contemporaneously with performance of the notarial act and contain the following information:

(a) The date and time of the notarial act;

(b) A description of the record, if any, and type of notarial act;

(c) The full name and address of each individual for whom the notarial act is performed;

(d) If identity of the individual is based on personal knowledge, a statement to that effect;

(e) If identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance and expiration of any identification credential;

(f) The address where the notarial act was performed if not the notary's business address; and

(g) The fee, if any, charged by the notary public.

(4) If the journal of notary public is lost or stolen, the notary public must notify promptly the Secretary of State upon discovery that the journal is lost or stolen.

(5) On resignation from, or the revocation or suspension of, a notary public's commission, the notary public must deposit all journal records with the circuit clerk of the county of residence of the notary public.

(6) Upon the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the journal shall:

(a) Notify the Secretary of State of the death or adjudication in writing; and

(b) Within thirty (30) days of death or adjudication of incompetency, transmit all journal records to the circuit clerk of the county of residence of the notary public.

HISTORY: Laws, 2020, ch. 382, § 19, eff from and after July 1, 2021.

§ 25-34-39. Notarial acts with respect to electronic records.

(1) A notary public may perform a notarial act with respect to electronic records pursuant to this chapter.

(2) The Secretary of State has the sole power to determine the methods by which notarial acts with respect to electronic records may be implemented in this state. Those methods must be set forth in rules promulgated by the Secretary of State.

(3) A notary public seeking to perform notarial acts with respect to electronic records must file an additional registration with the Secretary of State subsequent to being granted a notary commission.

HISTORY: Laws, 2020, ch. 382, § 20, eff from and after July 1, 2021.

§ 25-34-41. Qualifications of applicant for commission as notary public; oath of office; surety bond; term of commission; authority provided by commission.

(1) An individual qualified under subsection (2) may apply to the Secretary of State for a commission as a notary public. The applicant must comply with and provide the information required by rules established by the Secretary of State and pay any application fee.

(2) An applicant for a commission as a notary public must:

(a) Be at least eighteen (18) years of age;

(b) Be a citizen or permanent legal resident of the United States;

(c) Be a resident of Mississippi for not less than thirty (30) days immediately preceding the date of the application;

(d) Be able to read and write English;

(e) Not be disqualified to receive a commission under Section 25-34-43;; and

(f) Meet such other requirements as the Secretary of State may establish by rule.

(3) Before issuance of a commission as a notary public, an applicant for the commission must execute the oath of office prescribed by Section 268 of the Constitution and submit it to the Secretary of State.

(4) Before issuance of a commission as a notary public, the applicant for a commission must submit to the Secretary of State an assurance in the form of a surety bond or its functional equivalent in the amount of Five Thousand Dollars ($5,000.00) pursuant to the rules set forth by the Secretary of State. The assurance must be issued by a surety or other entity licensed by the Mississippi Department of Insurance. The assurance must cover acts performed during the term of the notary public's commission and must be in the form prescribed by the Secretary of State. If a notary public violates a law with respect to notaries public in this state, the surety or issuing entity is liable under the assurance. The surety or issuing entity must give thirty (30) days' notice to the Secretary of State before canceling the assurance. The surety or issuing entity must notify the Secretary of State not later than thirty (30) days

after making a payment to a claimant under the assurance. A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the Secretary of State.

(5) On compliance with this section, the Secretary of State shall issue a commission as a notary public to an applicant for a term of four (4) years.

(6) A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by the laws of this state on public officials or employees.

HISTORY: Laws, 2020, ch. 382, § 21, eff from and after July 1, 2021.

§ 25-34-43. Denial, refusal to renew, revocation, suspension or imposition of condition on commission for certain reasons; appeal.

(1) The Secretary of State may deny, refuse to renew, revoke, suspend or impose a condition on a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence or reliability to act as a notary public, including:

(a) Failure to comply with this chapter;

(b) A fraudulent, dishonest or deceitful misstatement or omission in the application for a commission as a notary public submitted to the Secretary of State;

(c) A conviction of any felony, including a plea of nolo contendere, of the applicant or notary public, unless released from incarceration more than ten (10) years before the commission is to take effect or, if no incarceration is ordered, more than ten (10) years from the conviction date have passed;

(d) A conviction, including a plea of nolo contendere, of the applicant or notary public for any crime determined by the Secretary of State to be of a nature incompatible with the duties of a notary public;

(e) Failure by the notary public to discharge any duty required of a notary public, whether required by this chapter, rules of the Secretary of State or any federal or state law;

(f) Use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right or privilege that the notary does not have;

(g) Violation by the notary public of a rule of the Secretary of State regarding a notary public;

(h) Denial, refusal to renew, revocation, suspension or conditioning of a notary public commission in another state;

(i) Failure of the notary public to maintain an assurance as provided in Section 25-34-41(4); or

(j) Failure to maintain and protect the notary's journal as required by this chapter and any rules promulgated by the Secretary of State under this chapter.

(2) If the Secretary of State denies, refuses to renew, revokes, suspends or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to file an appeal in proper form with the Secretary of State within forty-five (45) days after the Secretary of State's action, except that an applicant may not appeal when the Secretary of State, within five (5) years preceding the application, has:

(a) Denied or revoked for disciplinary reasons any previous application, commission or license of the applicant; or

(b) Made a finding under this chapter that the grounds for revocation of the applicant's commission existed.

(3) The authority of the Secretary of State to deny, refuse to renew, suspend, revoke or impose conditions on a commission as a notary public does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law.

HISTORY: Laws, 2020, ch. 382, § 22, eff from and after July 1, 2021.

§ 25-34-45. Electronic database of notaries public.

The Secretary of State must maintain an electronic database of notaries public:

(a) Through which a person may verify the authority of a notary public to perform notarial acts; and

(b) Which indicates whether a notary public has notified the Secretary of State that the notary public will be performing notarial acts on electronic records.

HISTORY: Laws, 2020, ch. 382, § 23, eff from and after July 1, 2021.

§ 25-34-47. Limitation on authorization provided by commission as notary public; certain restrictions; penalties for violation.

(1) A commission as a notary public does not authorize an individual to:

(a) Assist persons in drafting legal records, give legal advice or otherwise practice law;

(b) Act as an immigration consultant or an expert on immigration matters;

(c) Represent a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship or related matters; or

(d) Receive compensation for performing any of the activities listed in this subsection.

(2) A notary public may not engage in false or deceptive advertising.

(3) A notary public who is not an attorney licensed to practice law in this state may not use the term "notario" or "notario publico."

(4) A notary public who is not an attorney licensed to practice law in this state may not advertise or represent that the notary public may assist persons

in drafting legal records, give legal advice or otherwise practice law. If a notary public who is not an attorney licensed to practice law in this state in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media and the Internet, the notary public must include the following statement, or an alternate statement authorized or required by the Secretary of State, in the advertisement or representation, prominently and in each language used in the advertisement or representation: "I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities." If the form of advertisement or representation is not broadcast media, print media or the Internet and does not permit inclusion of the statement required by this subsection because of size, it must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(5) Except as otherwise allowed by law, a notary public may not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notary public.

(6) Failure to comply with subsections (1) through (5) constitutes an unfair or deceptive act under Section 75-24-5.

(7) A person who knowingly and willfully violates subsections (1) through (5) is guilty of a misdemeanor, and upon conviction, shall be fined in an amount not to exceed One Thousand Dollars ($1,000.00).

(8) Upon a second conviction of any person under subsections (1) through (5), the offenses being committed within a period of five (5) years, the person is guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment in the county jail for a period not to exceed one (1) year or a fine in an amount not to exceed One Thousand Dollars ($1,000.00), or both.

(9) Upon a third or subsequent conviction of any person for violation of subsections (1) through (5), the offenses being committed within a period of five (5) years, the person is guilty of a felony, and upon conviction, shall be punished by confinement in the custody of the Mississippi Department of Corrections for a period not to exceed five (5) years or a fine in an amount not to exceed Five Thousand Dollars ($5,000.00), or both.

(10) Criminal convictions in other jurisdictions for violations of substantially similar provisions to those contained in subsections (1) through (5) are counted in computing whether a violation under subsections (1) through (5) is a first, second, third or subsequent offense.

HISTORY: Laws, 2020, ch. 382, § 24, eff from and after July 1, 2021.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

§ 25-34-49. Validity of notarial act.

Except as otherwise provided in Section 25-34-7(2), the failure of a notarial officer to perform a duty or meet a requirement specified in this chapter does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this chapter does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on the laws of this state other than this chapter or the laws of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

HISTORY: Laws, 2020, ch. 382, § 25, eff from and after July 1, 2021.

§ 25-34-51. Secretary of State may adopt rules and regulations to implement chapter.

The Secretary of State may adopt any rules necessary to implement this chapter after complying with the Mississippi Administrative Procedures Law.

HISTORY: Laws, 2020, ch. 382, § 26, eff from and after July 1, 2021.

Cross References — Mississippi Administrative Procedures Law, see § 25-43-1.101 et seq.

§ 25-34-53. Commission as notary public in effect on July 1, 2021, continues to expiration; compliance with chapter by notaries public on or after July 1, 2021.

A commission as a notary public in effect on July 1, 2021, continues until its date of expiration. A notary public who applies to renew a commission as a notary public on or after July 1, 2021, is subject to and must comply with this chapter. A notary public, in performing notarial acts after July 1, 2021, must comply with this chapter.

HISTORY: Laws, 2020, ch. 382, § 27, eff from and after July 1, 2021.

§ 25-34-55. Validity of notarial acts performed before July 1, 2021, not affected by this chapter.

This chapter does not affect the validity or effect of a notarial act performed before July 1, 2021.

HISTORY: Laws, 2020, ch. 382, § 28, eff from and after July 1, 2021.

§ 25-34-57. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act, 15 USC Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 USC Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USC Section 7003(b).

HISTORY: Laws, 2020, ch. 382, § 29, eff from and after July 1, 2021.

CHAPTER 41.

OPEN MEETINGS

Sec.	
25-41-1.	Legislative declaration.
25-41-7.	Executive sessions.

§ 25-41-1. Legislative declaration.

It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy, it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein.

HISTORY: Laws, 1975, ch. 481, § 1, eff from and after January 1, 1976.

OPINIONS OF THE ATTORNEY GENERAL

A municipality that is participating in a self insured pool is a public body carrying out a governmental function and is subject to the Public Meetings Act in the conduct of such activities. Lee, Nov. 6, 1991, A.G. Op. #91-0855.

Nothing in Open Meetings Act requires Water and Sewer District to provide their consumer lists to third party requesting such list. Tisdale Nov. 24, 1993, A.G. Op. #93-0833.

Although there is no statutory requirement that county sheriff remain or be excused during closed executive session, it is within discretion of Board of Supervisors to determine whether sheriff should be present during any executive session. Davis, Jan. 20, 1994, A.G. Op. #93-0992.

County Council of Governments was merely voluntary association of local governments and did not appear to have any corporate existence; thus, it did not appear to fall within purview of Open Meetings Act. Cochran, Feb. 24, 1994, A.G. Op. #94-0049.

Attendance by members of local governing boards meetings held by voluntary association of local governments may fall under purview of Open Meetings Act. Cochran, Feb. 24, 1994, A.G. Op. #94-0049.

Legislative policy behind Open Meetings Act is that public business be performed in open and public manner and that citizens be advised of deliberations and decisions that go into the making of public policy. Cochran, Feb. 24, 1994, A.G. Op. #94-0049.

A Board of Supervisors may not hold or transact official acts outside the County in which they were elected. See Section 19-3-11 and Sections 25-41-1 et seq. Ellis, March 1, 1995, A.G. Op. #95-0119.

Under Sections 25-41-1 and 25-41-3(b), a luncheon will not violate open meetings laws so long as the Board does not discuss matters pertaining to possible future public policy. Caldwell, August 9, 1996, A.G. Op. #96-0425.

A city council member may discuss a proposed annexation in an open meeting when the council has not voted to declare an executive session; however, the legislature has provided for executive sessions for discussions with respect to prospective litigation for the protection of the public interest. Brogdon, January 8, 1999, A.G. Op. #98-0783.

A school district may not develop a policy that bans recording devices or tape recorders from school board meetings, as such policy would be in violation of the state open meetings laws. However, the board may promulgate reasonable rules and policies concerning the recording of meetings. Smith, Aug. 8, 2005, A.G. Op. 05-0371.

A school board may employ legal counsel other than the Board Attorney only by a majority vote of a quorum present in a properly noticed and open meeting of the board, and must officially hire an attorney before sharing any confidential personnel records. Reasons for non-renewal of a superintendent's contract and any settlement offers must be approved and recorded in the minutes at an official meeting of the board. All policies, actions, and decisions of the school board must be reasonable and necessary to meet the educational needs of the district's children. Foreman, March 30, 2007, A.G. Op. #07-00119, 2007 Miss. AG LEXIS 71.

§ 25-41-3. Definitions.

For purposes of this chapter, the following words shall have the meaning ascribed herein, to wit:

(a) "Public body" means any executive or administrative board, commission, authority, council, department, agency, bureau or any other policymaking entity, or committee thereof, of the State of Mississippi, or any political subdivision or municipal corporation of the state, whether the entity be created by statute or executive order, which is supported wholly or in part by public funds or expends public funds, and any standing, interim or special committee of the Mississippi Legislature. The term "public body" includes the governing board of a charter school authorized by the Mississippi Charter School Authorizer Board and the board of trustees of a community hospital as defined in Section 41-13-10. The term "public body" includes the Mississippi Lottery Corporation. There shall be exempted from the provisions of this chapter:

(i) The judiciary, including all jury deliberations;

(ii) Law enforcement officials;

(iii) The military;

(iv) The State Probation and Parole Board;

(v) The Workers' Compensation Commission;

(vi) Legislative subcommittees and legislative conference committees;

(vii) The arbitration council established in Section 69-3-19;

(viii) License revocation, suspension and disciplinary proceedings held by the Mississippi State Board of Dental Examiners; and

(ix) Hearings and meetings of the Board of Tax Appeals and of the hearing officers and the board of review of the Department of Revenue as provided in Section 27-77-15.

(b) "Meeting" means an assemblage of members of a public body at which official acts may be taken upon a matter over which the public body has supervision, control, jurisdiction or advisory power, including an assemblage through the use of video or teleconference devices that conforms to Section 25-41-5.

HISTORY: Laws, 1975, ch. 481, § 2; Laws, 1991, ch. 483, § 34; Laws, 2000, ch.

623, § 9; Laws, 2003, ch. 496, § 1; Laws, 2005, ch. 499, § 11; Laws, 2009, ch. 492, § 8; Laws, 2013, ch. 497, § 33; Laws, 2015, ch. 484, § 1; Laws, 2016, ch. 434, § 1, eff from and after Jan. 1, 2016; Laws, 2018, 1st Ex Sess, ch. 2, § 50, eff from and after September 1, 2018; brought forward without change, Laws, 2021, ch. 393, § 2, eff from and after passage (approved July 1, 2021).

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, added the next-to-last sentence of (a).

The 2021 amendment brought the section forward without change.

Cross References — Mississippi Lottery Corporation, see § 27-115-7 et seq.

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Meeting of Metro Narcotics Task Force is exempted from Open Meetings Act. Klein, May 3, 1991, A.G. Op. #91-0293.

County Council of Governments was merely voluntary association of local governments and did not appear to have any corporate existence; thus, it did not appear to fall within purview of Open Meetings Act. Cochran, Feb. 24, 1994, A.G. Op. #94-0049.

If non-profit corporation that administers baseball leagues is not entity created by statute or order of State or city, then non-profit corporation is not subject to Public Meetings Law notwithstanding it is in part funded by public money. Mills, March 9, 1994, A.G. Op. #94-0113.

Under Sections 25-41-1 and 25-41-3(b), a luncheon will not violate open meetings laws so long as the Board does not discuss matters pertaining to possible future public policy. Caldwell, August 9, 1996, A.G. Op. #96-0425.

A voluntary association of local governments and governmental officials is not a public body for purposes of the open meetings requirement and, although meetings of the Council of Governments would not be subject to the requirement, attendance by members of the local governing boards at Council of Governments meetings might well fall under the open meetings purview. Threatt, January 16, 1998, A.G. Op. #97-0835.

Neither a private nonprofit corporation nor a limited liability corporation meets the definition for a “public body”. Williamson, Feb. 4, 2000, A.G. Op. #1999-0674.

Official meetings of public bodies of the Division of Medicaid are subject to the Open Meetings Act. Moak, July 19, 2002, A.G. Op. #02-0355.

Meetings of Medicaid’s Drug Use Review Board are subject to Mississippi’s Open Meetings Law, and the board must comply with § 25-41-11, requiring minutes of meetings, whether in open or executive session, and § 25-41-13, requiring notices of meetings. Moak, July 19, 2002, A.G. Op. #02-0355.

Meetings of Medicaid’s Pharmacy and Therapeutics Board are subject to Mississippi’s Open Meetings Law, and the board must comply with § 25-41-11, requiring minutes of meetings, whether in open or executive session, and § 25-41-13, requiring notices of meetings. Moak, July 19, 2002, A.G. Op. #02-0355.

The attendance of more than one supervisor at a meeting organized and called by a state or federal economic development agencies whose sole purpose is to disseminate information of available grants and favorable loans for public projects, is not in violation of the Open Meetings Act; however, this only remains true if the members of Board of Supervisors refrain from discussing official business and no official actions are taken. Clanton, Apr. 4, 2003, A.G. Op. 03-0139.

§ 25-41-5. Official meetings of public bodies to be public and open; provisions for teleconference and video meetings.

OPINIONS OF THE ATTORNEY GENERAL

Several aldermen may attend social or civic gatherings without being in contravention of the Open Meetings Act if no official business is discussed and no official actions are taken. Ladner, May 24, 2002, A.G. Op. #02-0249.

The attendance of more than one supervisor at a meeting organized and called by a state or federal economic development agencies whose sole purpose is to disseminate information of available grants and favorable loans for public projects, is not in violation of the Open Meetings Act; however, this only remains true if the members of Board of Supervisors refrain from discussing official business and no official actions are taken. Clanton, Apr. 4, 2003, A.G. Op. 03-0139.

More specific procedures for conducting meetings via electronic means are within the discretion of the governing body to establish, provided those procedures are not inconsistent with the statute. Neville, Dec. 30, 2003, A.G. Op. 03-0702.

While a board may promulgate reasonable rules concerning taping of public meetings, the flat prohibition of taping meetings is unreasonable. Unless the board finds, consistent with fact, that the presence and use of a camera, or several cameras, would be disruptive, then the board cannot prohibit cameras. Brown, July 7, 2004, A.G. Op. 04-0253.

In a code charter municipality with a five member board of aldermen, if three members fail to appear for any meeting, a quorum does not exist and no official business can legally be conducted. Young, Aug. 27, 2004, A.G. Op. 04-0421.

A school board may but has no legal obligation to publicly report its action immediately upon exiting executive session. In any case, such action must be reflected in its minutes which must be timely recorded. Rhodes, Aug. 27, 2004, A.G. Op. 04-0315.

§ 25-41-7. Executive sessions.

(1) Any public body may enter into executive session for the transaction of public business; however, all meetings of any public body shall commence as an open meeting, and an affirmative vote of three-fifths (3/5) of all members present shall be required to declare an executive session.

(2) The procedure to be followed by any public body in declaring an executive session shall be as follows: Any member shall have the right to request by motion a closed determination upon the issue of whether or not to declare an executive session. The motion, by majority vote, shall require the meeting to be closed for a preliminary determination of the necessity for executive session. No other business shall be transacted until the discussion of the nature of the matter requiring executive session has been completed and a vote, as required in subsection (1) hereof, has been taken on the issue.

(3) An executive session shall be limited to matters allowed to be exempted from open meetings by subsection (4) of this section. The reason for holding an executive session shall be stated in an open meeting, and the reason so stated shall be recorded in the minutes of the meeting. Nothing in this section shall be construed to require that any meeting be closed to the public,

nor shall any executive session be used to circumvent or to defeat the purposes of this chapter.

(4) A public body may hold an executive session pursuant to this section for one or more of the following reasons:

(a) Transaction of business and discussion of personnel matters relating to the job performance, character, professional competence, or physical or mental health of a person holding a specific position, or matters relating to the terms of any potential or current employment or services agreement with any physicians or other employees of public hospitals, including any discussion of any person applying for medical staff privileges or membership with a public hospital.

(b) Strategy sessions or negotiations with respect to prospective litigation, litigation or issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the public body.

(c) Transaction of business and discussion regarding the report, development or course of action regarding security personnel, plans or devices.

(d) Investigative proceedings by any public body regarding allegations of misconduct or violation of law.

(e) Any body of the Legislature which is meeting on matters within the jurisdiction of that body.

(f) Cases of extraordinary emergency which would pose immediate or irrevocable harm or damage to persons or property, or both, within the jurisdiction of the public body.

(g) Transaction of business and discussion regarding the prospective purchase, sale or leasing of lands.

(h) Discussions between a school board and individual students who attend a school within the jurisdiction of the school board or the parents or teachers of the students regarding problems of the students or their parents or teachers.

(i) Transaction of business and discussion concerning the preparation of tests for admission to practice in recognized professions.

(j) Transaction of business and discussions or negotiations regarding the location, relocation or expansion of a business, medical service or an industry.

(k) Transaction of business and discussions regarding employment or job performance of a person in a specific position or termination of an employee holding a specific position. The exemption provided by this paragraph includes transaction of business and discussion in executive session by the board of trustees of a public hospital regarding any employee or medical staff member or applicant for medical staff privileges and any such individual's credentialing, health, performance, salary, raises or disciplinary action. The exemption provided by this paragraph includes the right to enter into executive session concerning a line item in a budget which might affect the termination of an employee or employees. All other budget items shall be considered in open meetings and final budgetary adoption shall not be taken in executive session.

(*l*) Discussions regarding material or data exempt from the Mississippi Public Records Act of 1983 pursuant to Section 25-11-121.

(m) Transaction of business and discussion regarding prospective strategic business decisions of public hospitals, including without limitation, decisions to open a new service line, implement capital improvements, or file applications for certificates of need or determinations of nonreviewability with the State Department of Health.

(n) Transaction of business of the boards of trustees of public hospitals that would require discussion of any identifiable patient information, including without limitation, patient complaints, patients' accounts, patients receiving charity care, or treatment that could be identified to a patient.

(o) Investigative discussions, investigative strategies, probative strategies related to identifiable instances of human trafficking or commercial sexual exploitation, and discussions involving locations of shelters or safehouses for victims of human trafficking or commercial sexual exploitation.

(p) Transaction of business of committees, subcommittees or boards that would require discussion of any identifiable information of victims of human trafficking or children under eighteen years old who are victims of commercial sexual exploitation.

(5) The total vote on the question of entering into an executive session shall be recorded and spread upon the minutes of the public body.

(6) Any vote whereby an executive session is declared shall be applicable only to that particular meeting on that particular day.

HISTORY: Laws, 1975, ch. 481, § 4; Laws, 1981, ch. 456, § 1; Laws, 1990, ch. 541, § 1; Laws, 2007, ch. 305, § 2; Laws, 2015, ch. 484, § 2, eff from and after Jan. 1, 2016; Laws, 2021, ch. 393, § 1, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment added (4)(o) and (p).

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Requiring release of transcripts or recordings of lawfully conducted executive sessions would entirely frustrate purposes for allowing such sessions to be held; Open Meetings Act and Public Records Act are construed to be in pari materia, and recordings or transcripts of lawfully called and conducted executive sessions are not subject to public disclosure; fact that meeting occurs in executive session does not alter either necessity for keeping accurate minutes, or right of public access to those minutes. Jones, Oct. 26, 1990, A.G. Op. #90-0205.

Board of trustees of community hospital may go into executive session without attorney present; however, board must have matter for discussion which is exempt from Open Meetings Act as set forth in Miss. Code Section 25-41-7; board must comply with procedures set forth in that section. Hollimon, May 12, 1993, A.G. Op. #93-0274.

Civil Service Commission may enter into executive session to discuss actions to be taken concerning personnel matters pursuant to Section 25-41-7(4)(a) after Commission has heard witnesses in public hearing. Bardwell, March 9, 1994, A.G. Op. #94-0121.

Under Section 25-41-7, who is allowed to remain during an executive session is entirely within the discretion of the public body conducting the meeting. Bradshaw, April 20, 1995, A.G. Op. #95-0163.

A board cannot achieve a quorum

through participation over the telephone; a quorum must be physically present; however, as long as all deliberations and votes are conducted in a manner that provides access to the public and are properly recorded, and the meeting is properly noticed and at all times open to the public at the place normally set aside for board meetings, participation of a member in a regular meeting via telephone conference call satisfies the requirements of the Open Meetings Act. Montague, Dec. 10, 1999, A.G. Op. #99-0647.

If a public body determines, as reflected in the minutes, that the salary or compensation of a particular official or employee includes discussion of their job performance, character or professional competence, then the declaration of an executive session to discuss these issues would be proper; however, once decided upon, the amount of the salary would be public record. Clements, Feb. 8, 2002, A.G. Op. #02-0022.

A general across the board salary increase for all employees is public knowledge and not subject to discussion in an executive session. Clements, Feb. 8, 2002, A.G. Op. #02-0022.

Specified contract negotiations for sporting events, concerts, and theatrical auditions did not qualify for an exemption under the Open Meetings Act. Nowak, July 10, 2002, A.G. Op. #02-0342.

When patient confidentiality can be protected by blinding patient names using numerical or other anonymous identifiers, the Medicaid Division cannot circumvent the Open Meetings Act by entering into an executive session. Moak, July 19, 2002, A.G. Op. #02-0355.

While there does not appear to be any need for executive sessions once a project became public knowledge, that determination is left to the discretion of the board of supervisors. Morgan, May 21, 2004, A.G. Op. 04-0189.

There is nothing that prohibits members of the board of aldermen from disclosing information discussed during the executive session. However, a violation of § 25-4-105(a) may result if a member of a municipal board uses information learned during an executive session for his or her personal pecuniary benefit. Thomas, Sept. 10, 2004, A.G. Op. 04-0439.

There is no provision for removal of municipal officers for disclosing discussions which occur during executive session. Thomas, Sept. 10, 2004, A.G. Op. 04-0439.

A school board may but has no legal obligation to publicly report its action immediately upon exiting executive session. In any case, such action must be reflected in its minutes which must be timely recorded. Rhodes, Aug. 27, 2004, A.G. Op. 04-0315.

Nothing in the open meetings law prohibits members of the board of aldermen from disclosing information discussed during executive sessions, nor does the law provide any penalties for those persons who disclose matters discussed in executive session. Carson, Feb. 17, 2006, A.G. Op. 06-0042.

§ 25-41-9. Regulatory authority for governing; conduct of persons attending meetings.

OPINIONS OF THE ATTORNEY GENERAL

Private citizen may tape record all discussions taking place at open meeting of any public body, subject to such reasonable rules and regulations which that public body may enact; it would not be "reasonable" for any public body to flatly prohibit such practice. Garrett, May 3, 1990, A.G. Op. #90-0317.

Whether television and radio coverage disrupt meeting are questions of fact to be determined by public officials charged with responsibility to enforce reasonable rules and regulations for conduct of persons attending open meetings. Lackey, Sept. 6, 1990, A.G. Op. #90-0605.

Private citizen may tape record all discussions taking place at open meeting of any public body, subject to such reasonable rules and regulations which public body may enact pursuant to Miss. Code

Section 25-41-9; it would not be reasonable for any public body to flatly prohibit such practice. Warren, May 12, 1993, A.G. Op. #93-0340.

Under the Mississippi Open Meetings Act, Miss. Code Ann. § 25-41-1 et seq., a municipality's Board of Aldermen may develop rules concerning the video or audio recording of its meetings to allow for minimal disruption thereof, but may not limit or restrict such recordings based upon the person's purpose in making the recording. Carnathan, February 9, 2007, A.G. Op. #07-00021, 2007 Miss. AG LEXIS 17.

§ 25-41-11. Minutes.

OPINIONS OF THE ATTORNEY GENERAL

When governing authorities decide in executive session to make offer in settlement of lawsuit or to authorize attorney to negotiate within certain range, governing authorities should state in minutes only that attorney is authorized to negotiate with individuals to settle lawsuit; when governing authorities finally approve an amount which has been accepted for settlement of lawsuit, then the governing authorities should state in minutes amount which they have approved for settlement of the lawsuit. Donald, Nov. 18, 1992, A.G. Op. #92-0767.

Meetings of Medicaid's Pharmacy and Therapeutics Board are subject to Mississippi's Open Meetings Law, and the board must comply with § 25-41-11, requiring minutes of meetings, whether in open or executive session, and § 25-41-13, requiring notices of meetings. Moak, July 19, 2002, A.G. Op. #02-0355.

A city board member may be present during the hearing for disciplinary actions on their immediate relative. Davis, July 19, 2002, A.G. Op. #02-0396.

The governing authority has the ultimate authority to determine what should be included and what should be omitted from the minutes, so long as the statutory requirements are met. Rouse, Feb. 7, 2003, A.G. Op. #03-0059.

It is left to the discretion of the board of supervisors to determine whether an individual supervisor's comments on his or her vote, i.e., point of personal privilege, should be included in the minutes. Morgan, May 21, 2004, A.G. Op. 04-0189.

A school board may but has no legal obligation to publicly report its action immediately upon exiting executive session. In any case, such action must be reflected in its minutes which must be timely recorded. Rhodes, Aug. 27, 2004, A.G. Op. 04-0315.

It is left to the discretion of the governing board whether to include information in the minutes other than the recording of final actions. Carson, Feb. 17, 2006, A.G. Op. 06-0042.

The minutes of any executive session must be incorporated with, or otherwise attached, to the minutes of the meeting in which the executive session was held. Carson, Feb. 17, 2006, A.G. Op. 06-0042.

While it is the ultimate determination of a board to determine what should be included in the minutes of its meeting, the minutes should accurately reflect what transpired at the meeting. Brooks, Oct. 6, 2006, A.G. Op. 06-0475.

§ 25-41-13. Notice of meetings.

OPINIONS OF THE ATTORNEY GENERAL

In an emergency, the Mississippi Emergency Management Agency and local emergency management organizations may call a special meeting, provided that required notice is posted within one hour and that procedure of notification is reasonably calculated to insure that a person could find out when and where the special meeting will be held. Mahler, Feb. 20, 1992, A.G. Op. #92-0004.

Meetings of Medicaid's Pharmacy and Therapeutics Board are subject to Mississippi's Open Meetings Law, and the board must comply with § 25-41-11, requiring minutes of meetings, whether in open or executive session, and § 25-41-13, requiring notices of meetings. Moak, July 19, 2002, A.G. Op. #02-0355.

Failure to post notice of a called special meeting of a county school district board of trustees and failure to enter such notice in the official minutes as required by subsection (1) of this section is a violation of the Open Meetings Act. However, this violation in and of itself does not make the meeting a nullity. Haynes, Mar. 5, 2004, A.G. Op. 04-0053.

Absent any direction to the contrary by official municipal policy, the only notice requirement applicable to a special meeting called in a city governed by a special charter is that contained in this section. In addition to following the notice requirements of this section, actual notice with reasonable opportunity to attend must be afforded to each member. The council should adopt a policy or ordinance setting out notice requirements for special meetings. Stovall, Mar. 12, 2004, A.G. Op. 0069.

Where a special meeting was called, but a quorum was not present, the minutes should contain a copy of the notice as provided in this section, the time, date and place of the meeting, the members present, and a finding that a quorum was not present to take any official actions. Stovall, Mar. 12, 2004, A.G. Op. 0069.

§ 25-41-15. Enforcement.

OPINIONS OF THE ATTORNEY GENERAL

The open, contumacious violation of the Open Meetings Act by a county board of supervisors is not a violation of any criminal statute. Wolfe, Feb. 1, 2001, A.G. Op. #2001-0019.

The enforcement provision of the Open Meetings Act gives any member of the public, including the county supervisor, the right to enforce the Open Meetings Act in the chancery courts of the state. Wolfe, Feb. 1, 2001, A.G. Op. #2001-0019.

CHAPTER 43.

ADMINISTRATIVE PROCEDURES

ARTICLE 1.

GENERAL PROVISIONS.

§ 25-43-1.102. Definitions.

OPINIONS OF THE ATTORNEY GENERAL

A proposed regulation of the Mississippi Wireless Communication Commission (WCC) placing a limited moratorium on the procurement of wireless communication services by local governments would fall within the definition of "rule" in the Administrative Procedures Law (APL), thereby requiring the WCC to comply with the APL's filing and notice requirements. Phillips, Oct. 14, 2005, A.G. Op. 05-0440.

Instructions for the use of an agency "form whose contents or substantive requirements are prescribed by rule or statute" are exempt from the APA's filing and notice procedures. Whether the contents or substantive requirements of the form, including its accompanying instructions, have been prescribed by a rule or statute is a factual determination. Clark, Mar. 10, 2006, A.G. Op. 06-0056.

A regional housing authority is not an

"agency" for purposes of the Administrative Procedures Law and is thus exempt from the requirements thereof, including the filing of rules. Rhodes, May 5, 2006, A.G. Op. 06-0152.

CHAPTER 51.

STATE DEPOSITORY FOR PUBLIC DOCUMENTS

§ 25-51-1. Designation of Mississippi Library Commission as state depository for public records; electronic form of publications as public record.

OPINIONS OF THE ATTORNEY GENERAL

Under Section 25-51-1, a document issued for public distribution is a document created by a state agency for the general public, as opposed to internal memos, attorney work product, or records created in the course of business. Pellington, October 18, 1995, A.G. Op. #95-0686.

The Commission has authority to distribute state agency publications to college libraries which are not publicly supported pursuant to Section 25-51-1. Pellington, October 18, 1995, A.G. Op. #95-0686.

§ 25-51-5. Annual lists of public documents.

OPINIONS OF THE ATTORNEY GENERAL

Public community colleges and universities are not considered to be state agencies for purposes of Section 25-51-5. Pellington, October 18, 1995, A.G. Op. #95-0686.

CHAPTER 53.

MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES (MDITS)

General Provisions. 25-53-1

GENERAL PROVISIONS

Sec.
25-53-1. Establishment of department; declaration of purposes.
25-53-5. Powers, duties and responsibilities; funding of agency expenses.

§ 25-53-1. Establishment of department; declaration of purposes.

The Legislature recognizes that in order for the State of Mississippi to receive the maximum use and benefit from information technology and services now in operation or which will in the future be placed in operation, there should be full cooperation and cohesive planning and effort by and between the several state agencies and that it is the responsibility of the Legislature to provide statutory authority therefor. The Legislature, therefore, declares and determines that for these and other related purposes there is hereby established an agency of state government to be known as the Mississippi Department of Information Technology Services (MDITS). The Legislature further declares that the Mississippi Department of Information Technology Services (MDITS) shall provide statewide services that facilitate cost-effective information processing and telecommunication solutions. State agencies shall work in full cooperation with the board of MDITS to identify opportunities to minimize duplication, reduce costs and improve the efficiency of providing common technology services across agency boundaries. The provisions of this chapter shall not apply to the Department of Human Services for a period of three (3) years beginning July 1, 2017. The provisions of this chapter shall not apply to the Department of Child Protection Services for a period of three (3) years beginning July 1, 2017.

[Repealed].

HISTORY: Codes, 1942, § 8946-61; Laws, 1968, ch. 499, § 1; Laws, 1970, ch. 466, § 1; Laws, 1995, ch. 622, § 1; Laws, 2012, ch. 498, § 1; Laws, 2016, ch. 494, § 6, eff from and after July 1, 2016; Laws, 2019, ch. 382, § 1, eff from and after July 1, 2019.

Editor's Notes — The last paragraph, which related to the notice that was required to be given by the Department of Human Services or Department of Child Protection Services before either could take an action that would otherwise be subject to the provisions of this section, was repealed by its own terms, effective July 1, 2020.

Amendment Notes — The 2019 amendment, in the first paragraph, deleted a duplicate "the" preceding "Legislature to provide" in the first sentence, and substituted "July 1, 2017" for "July 1, 2016" in the last two sentences; and extended the date of the repealer for the last paragraph by substituting "July 1, 2020" for "July 1, 2019" in the last sentence.

§ 25-53-3. Definitions.

OPINIONS OF THE ATTORNEY GENERAL

Community and junior colleges, not being agencies of the state, do not fall under the purview of the Department of Information Technology Services for the acquisition of information technology equipment and services. Litchliter, Mar. 16, 2001, A.G. Op. #01-0139.

§ 25-53-5. Powers, duties and responsibilities; funding of agency expenses.

The authority shall have the following powers, duties, and responsibilities:

(a)(i) The authority shall provide for the development of plans for the efficient acquisition and utilization of computer equipment and services by all agencies of state government, and provide for their implementation. In so doing, the authority may use the MDITS' staff, at the discretion of the executive director of the authority, or the authority may contract for the services of qualified consulting firms in the field of information technology and utilize the service of such consultants as may be necessary for such purposes. Pursuant to Section 25-53-1, the provisions of this section shall not apply to the Department of Human Services for a period of three (3) years beginning on July 1, 2017. Pursuant to Section 25-53-1, the provisions of this section shall not apply to the Department of Child Protection Services for a period of three (3) years beginning July 1, 2017.

(ii) [Repealed].

(b) The authority shall immediately institute procedures for carrying out the purposes of this chapter and supervise the efficient execution of the powers and duties of the office of executive director of the authority. In the execution of its functions under this chapter, the authority shall maintain as a paramount consideration the successful internal organization and operation of the several agencies so that efficiency existing therein shall not be adversely affected or impaired. In executing its functions in relation to the institutions of higher learning and junior colleges in the state, the authority shall take into consideration the special needs of such institutions in relation to the fields of teaching and scientific research.

(c) Title of whatever nature of all computer equipment now vested in any agency of the State of Mississippi is hereby vested in the authority, and no such equipment shall be disposed of in any manner except in accordance with the direction of the authority or under the provisions of such rules and regulations as may hereafter be adopted by the authority in relation thereto.

(d) The authority shall adopt rules, regulations, and procedures governing the acquisition of computer and telecommunications equipment and services which shall, to the fullest extent practicable, insure the maximum of competition between all manufacturers of supplies or equipment or services. In the writing of specifications, in the making of contracts relating to the acquisition of such equipment and services, and in the performance of its other duties the authority shall provide for the maximum compatibility of all information systems hereafter installed or utilized by all state agencies and may require the use of common computer languages where necessary to accomplish the purposes of this chapter. The authority may establish by regulation and charge reasonable fees on a nondiscriminatory basis for the furnishing to bidders of copies of bid specifications and other documents issued by the authority.

(e) The authority shall adopt rules and regulations governing the sharing with, or the sale or lease of information technology services to any nonstate agency or person. Such regulations shall provide that any such sharing, sale or lease shall be restricted in that same shall be accomplished only where such services are not readily available otherwise within the state, and then only at a charge to the user not less than the prevailing rate of charge for similar services by private enterprise within this state.

(f) The authority may, in its discretion, establish a special technical advisory committee or committees to study and make recommendations on technology matters within the competence of the authority as the authority may see fit. Persons serving on the Information Resource Council, its task forces, or any such technical advisory committees shall be entitled to receive their actual and necessary expenses actually incurred in the performance of such duties, together with mileage as provided by law for state employees, provided the same has been authorized by a resolution duly adopted by the authority and entered on its minutes prior to the performance of such duties.

(g) The authority may provide for the development and require the adoption of standardized computer programs and may provide for the dissemination of information to and the establishment of training programs for the personnel of the various information technology centers of state agencies and personnel of the agencies utilizing the services thereof.

(h) The authority shall adopt reasonable rules and regulations requiring the reporting to the authority through the office of executive director of such information as may be required for carrying out the purposes of this chapter and may also establish such reasonable procedures to be followed in the presentation of bills for payment under the terms of all contracts for the acquisition of computer equipment and services now or hereafter in force as may be required by the authority or by the executive director in the execution of their powers and duties.

(i) The authority shall require such adequate documentation of information technology procedures utilized by the various state agencies and may require the establishment of such organizational structures within state agencies relating to information technology operations as may be necessary to effectuate the purposes of this chapter.

(j) The authority may adopt such further reasonable rules and regulations as may be necessary to fully implement the purposes of this chapter. All rules and regulations adopted by the authority shall be published and disseminated in readily accessible form to all affected state agencies, and to all current suppliers of computer equipment and services to the state, and to all prospective suppliers requesting the same. Such rules and regulations shall be kept current, be periodically revised, and copies thereof shall be available at all times for inspection by the public at reasonable hours in the offices of the authority. Whenever possible no rule, regulation or any proposed amendment to such rules and regulations shall be finally adopted or enforced until copies of the proposed rules and regulations have been furnished to all interested parties for their comment and suggestions.

(k) The authority shall establish rules and regulations which shall provide for the submission of all contracts proposed to be executed by the executive director for computer equipment or services to the authority for approval before final execution, and the authority may provide that such contracts involving the expenditure of less than such specified amount as may be established by the authority may be finally executed by the executive director without first obtaining such approval by the authority.

(*l*) The authority is authorized to purchase, lease, or rent computer equipment or services and to operate that equipment and use those services in providing services to one or more state agencies when in its opinion such operation will provide maximum efficiency and economy in the functions of any such agency or agencies.

(m) Upon the request of the governing body of a political subdivision or instrumentality, the authority shall assist the political subdivision or instrumentality in its development of plans for the efficient acquisition and utilization of computer equipment and services. An appropriate fee shall be charged the political subdivision by the authority for such assistance.

(n) The authority shall adopt rules and regulations governing the protest procedures to be followed by any actual or prospective bidder, offerer or contractor who is aggrieved in connection with the solicitation or award of a contract for the acquisition of computer equipment or services. Such rules and regulations shall prescribe the manner, time and procedure for making protests and may provide that a protest not timely filed shall be summarily denied. The authority may require the protesting party, at the time of filing the protest, to post a bond, payable to the state, in an amount that the authority determines sufficient to cover any expense or loss incurred by the state, the authority or any state agency as a result of the protest if the protest subsequently is determined by a court of competent jurisdiction to have been filed without any substantial basis or reasonable expectation to believe that the protest was meritorious; however, in no event may the amount of the bond required exceed a reasonable estimate of the total project cost. The authority, in its discretion, also may prohibit any prospective bidder, offerer or contractor who is a party to any litigation involving any such contract with the state, the authority or any agency of the state to participate in any other such bid, offer or contract, or to be awarded any such contract, during the pendency of the litigation.

(o) The authority shall make a report in writing to the Legislature each year in the month of January. Such report shall contain a full and detailed account of the work of the authority for the preceding year as specified in Section 25-53-29(3).

All acquisitions of computer equipment and services involving the expenditure of funds in excess of the dollar amount established in Section 31-7-13(c), or rentals or leases in excess of the dollar amount established in Section 31-7-13(c) for the term of the contract, shall be based upon competitive and open specifications, and contracts therefor shall be entered into only after advertisements for bids are published in one or more daily newspapers having a general circulation in the state not less than fourteen (14) days prior to receiving sealed bids therefor. The authority may reserve the right to reject any or all bids, and if all bids are rejected, the authority may negotiate a contract within the limitations of the specifications so long as the terms of any such negotiated contract are equal to or better than the comparable terms submitted by the lowest and best bidder, and so long as the total cost to the State of Mississippi does not exceed the lowest bid. If the authority accepts one (1) of such bids, it shall be that which is the lowest and best.

(p) When applicable, the authority may procure equipment, systems and related services in accordance with the law or regulations, or both, which govern the Bureau of Purchasing of the Office of General Services or which govern the Mississippi Department of Information Technology Services procurement of telecommunications equipment, software and services.

(q) The authority is authorized to purchase, lease, or rent information technology and services for the purpose of establishing pilot projects to investigate emerging technologies. These acquisitions shall be limited to new technologies and shall be limited to an amount set by annual appropriation of the Legislature. These acquisitions shall be exempt from the advertising and bidding requirement.

(r) All fees collected by the Mississippi Department of Information Technology Services shall be deposited into the Mississippi Department of Information Technology Services Revolving Fund unless otherwise specified by the Legislature.

(s) The authority shall work closely with the council to bring about effective coordination of policies, standards and procedures relating to procurement of remote sensing and geographic information systems (GIS) resources. In addition, the authority is responsible for development, operation and maintenance of a delivery system infrastructure for geographic information systems data. The authority shall provide a warehouse for Mississippi's geographic information systems data.

(t) The authority shall manage one or more State Data Centers to provide information technology services on a cost-sharing basis. In determining the appropriate services to be provided through the State Data Center, the authority should consider those services that:

(i) Result in savings to the state as a whole;

(ii) Improve and enhance the security and reliability of the state's information and business systems; and

(iii) Optimize the efficient use of the state's information technology assets, including, but not limited to, promoting partnerships with the state institutions of higher learning and community colleges to capitalize on advanced information technology resources.

(u) The authority shall increase federal participation in the cost of the State Data Center to the extent provided by law and its shared technology infrastructure through providing such shared services to agencies that receive federal funds. With regard to state institutions of higher learning and community colleges, the authority may provide shared services when mutually agreeable, following a determination by both the authority and the Board of Trustees of State Institutions of Higher Learning or the Mississippi Community College Board, as the case may be, that the sharing of services is mutually beneficial.

(v) The authority, in its discretion, may require new or replacement agency business applications to be hosted at the State Data Center. With regard to state institutions of higher learning and community colleges, the authority and the Board of Trustees of State Institutions of Higher Learning or the Mississippi Community College Board, as the case may be, may agree that institutions of higher learning or community colleges may utilize business applications that are hosted at the State Data Center, following a determination by both the authority and the applicable board that the hosting of those applications is mutually beneficial. In addition, the authority may establish partnerships to capitalize on the advanced technology resources of the Board of Trustees of State Institutions of Higher Learning or the Mississippi Community College Board, following a determination by both the authority and the applicable board that such a partnership is mutually beneficial.

(w) The authority shall provide a periodic update regarding reform-based information technology initiatives to the Chairmen of the House and Senate Accountability, Efficiency and Transparency Committees.

From and after July 1, 2018, the expenses of this agency shall be defrayed by appropriation from the State General Fund. In addition, in order to receive the maximum use and benefit from information technology and services, expenses for the provision of statewide shared services that facilitate cost-effective information processing and telecommunication solutions shall be defrayed by pass-through funding and shall be deposited into the Mississippi Department of Information Technology Services Revolving Fund unless otherwise specified by the Legislature. These funds shall only be utilized to pay the actual costs incurred by the Mississippi Department of Information Technology Services for providing these shared services to state agencies. Furthermore, state agencies shall work in full cooperation with the Board of the Mississippi Department of Information Technology Services to identify computer equipment or services to minimize duplication, reduce costs, and improve the efficiency of providing common technology services across agency boundaries.

HISTORY: Codes, 1942, §§ 8946-61, 8946-62; Laws, 1968, ch. 499, §§ 1, 2; Laws, 1970, ch. 466, §§ 1, 2; Laws, 1972, ch. 481, § 1; Laws, 1980, ch. 474; Laws, 1984, ch. 488, § 287; Laws, 1995, ch. 622, § 3; Laws, 1998, ch. 430, § 1; Laws, 1999, ch. 410, § 2; Laws, 2003, ch. 527, § 2; Laws, 2004, ch. 362, § 1; Laws, 2012, ch. 498, § 3; Laws, 2016, ch. 459, § 11; Laws, 2016, ch. 494, § 7, eff from and after July 1, 2016; Laws, 2018, ch. 433, § 3, eff from and after July 1, 2018; Laws, 2019, ch. 382, § 2, eff from and after July 1, 2019.

Editor's Notes — Subdivision (a)(ii), which related to the notice that was required to be given by the Department of Human Services or Department of Child Protection Services before either could take an action that would otherwise be subject to the provisions of this section, was repealed by its own terms, effective July 1, 2020.

Amendment Notes — The 2019 amendment substituted "July 1, 2017" for "July 1, 2016" in the last two sentences of (a)(i); and extended the date of the repealer for (a)(ii) by substituting "July 1, 2020" for "July 1, 2019" in the last sentence.

OPINIONS OF THE ATTORNEY GENERAL

If updated software program was truly available from one source only, acquisition by Central Data Processing Authority could be made pursuant to state purchasing law covering sole source acquisitions. Stebbins, July 2, 1993, A.G. Op. #93-0440.

Based upon Section 25-53-5, that no nonstate agency or person can acquire the use of any information technology services, including Internet access, from any state agency unless (1) such services are not readily available otherwise within the state, and (2) such users pay a charge for the services not less than the prevailing rate of charge for similar services by private enterprise within the state. Litchliter, May 10, 1996, A.G. Op. #96-0253.

Section 25-53-5 governs the provision of information technology services even in cases where such technology is purchased with wholly federal funds. Litchliter, May 10, 1996, A.G. Op. #96-0253.

Pursuant to subsection (o), the Mississippi Department of Information Technology Services may utilize the State Contract Price list to acquire equipment, systems, and related services when applicable; however, this would not raise the advertisement for bids threshold to $10,000.00 as provided in the amendment to § 31-7-13 contained in Senate Bill 2193. Litchliter, June 12, 1998, A.G. Op. #98-0342.

The general purchasing statute, § 31-7-13, applies to purchases by the Department of Finance and Administration and thus, arguably, to Mississippi Department of Information Technology Services (ITS) under subsection (o) of this section, but this general statute must yield to the specific requirements of subsection (n), which sets out the threshold for advertising for bids by ITS. Litchliter, June 12, 1998, A.G. Op. #98-0342.

Community and junior colleges, not being agencies of the state, do not fall under the purview of the Department of Information Technology Services for the acquisition of information technology equipment and services. Litchliter, Mar. 16, 2001, A.G. Op. #01-0139.

Without the statutory authority granted specifically to the Department of Finance and Administration, the Department of Information Technology Services (ITS) may not approve cooperative purchasing agreements developed by other government entities for the use of agencies and state institutions in the procurement of information technology products and services under the purview of ITS. Litchliter, Sept. 22, 2006, A.G. Op. 06-0457.

The Department of Information Technology Services ITS has the authority to adopt reasonable rules, regulations and procedures for the purpose of submitting purchasing agreements and contracts for approval by the Department of Finance and Administration as provided in Section 31-7-13(m)(i) to be utilized by ITS on behalf of agencies and institutions of the state. Litchliter, Sept. 22, 2006, A.G. Op. 06-0457.

§ 25-53-21. Executive director; duties, responsibilities and authority.

OPINIONS OF THE ATTORNEY GENERAL

Statutory requirements applicable to the acquisition of computer equipment and services are also applicable to the acquisition of computer equipment and services necessary to implement a computerized statewide voter registration system under the Help America Vote Act (HAVA). However, acquisitions of computer equipment and services approved by ITS in order to implement a computerized voter registration system under HAVA will also have to be approved by the Secretary of State. Bearman, July 27, 2004, A.G. Op. 04-0340.

§ 25-53-25. Exemptions; delegation of bidding and contracting responsibilities to purchasing agency; relation to Public Purchases Law.

OPINIONS OF THE ATTORNEY GENERAL

Community colleges, planning to purchase certain computer equipment entirely with federal funds are involved with programs which are exempt from bidding and contractual provisions of Miss. Code Section 25-53-25(3). Stebbins, Mar. 24, 1993, A.G. Op. #93-0229.

CHAPTER 55.

LOST RECORDS

§ 25-55-25. Duplicate for lost or destroyed original.

OPINIONS OF THE ATTORNEY GENERAL

The provisions of the statute are mandatory, and a county may not issue a duplicate or replacement warrant for one which was mailed but never received without requiring from the payee the affidavit and bond the statute. Goodwin, December 18, 1998, A.G. Op. #98-0769.

CHAPTER 58.

GEOGRAPHIC INFORMATION SYSTEM

IN GENERAL

§ 25-58-1. Definitions; boards of supervisors authorized to create geographic information system and prepare multipurpose cadastre.

OPINIONS OF THE ATTORNEY GENERAL

If aerial photographs of a portion of a county are to be a part of the county GIS system, those photographs can only be acquired by the county by bid with approval by the Mississippi Department of Information & Technology Services, the successor to the Mississippi Central Data Processing Authority. Chamberlin, Feb. 25, 2002, A.G. Op. #02-0067.

§ 25-58-3. Borrowing money to create geographic information system and to prepare multipurpose cadastre.

OPINIONS OF THE ATTORNEY GENERAL

How fees shall be calculated is matter for the board of supervisors to address; however the board must make factual determinations regarding each statutorily authorized factor used in determining the standard fee scale and have those determinations recorded in the minutes. Dowdy, Dec. 27, 2005, A.G. Op. 05-0612.

CHAPTER 59.

ARCHIVES AND RECORDS MANAGEMENT

Sec.
25-59-19. Records to be public property.

§ 25-59-17. Record control schedules for courts; destruction of court records.

OPINIONS OF THE ATTORNEY GENERAL

Unless the Supreme Court establishes applicable retention schedules in accordance with Section 25-59-17, before destroying a designated record the chancery clerk must seek and receive an order from the Supreme Court approving its destruction. Creekmore, Jan. 6, 2005, A.G. Op. 05-0624.

§ 25-59-19. Records to be public property.

Except as otherwise provided in Section 25-61-11.2, all records created or received in the performance of public duty and paid for by public funds are deemed to be public property and shall constitute a record of public acts.

HISTORY: Laws, 1981, ch. 501, § 10, eff from and after July 1, 1981; Laws, 2019, ch. 443, § 4, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added the exception at the beginning.

§ 25-59-21. Consent of director required for disposal of public records; rules and regulations.

OPINIONS OF THE ATTORNEY GENERAL

Section 41-9-69 does not regulate the retention of records by county health departments. Section 25-59-21 would govern the retention and destruction of these records. Thompson, October 18, 1995, A.G. Op. #95-0674.

As long as any microfilm, computer software or computer optical imaging of voter registration records contain all the basic registration information, as well as the date of registration and the signature of the elector as required by Section 23-15-113, the hard copies of such records may be destroyed. Before destroying any records, the consent of the Director of the Mississippi Department of Archives and History must be gained. Carpenter, April 14, 1996, A.G. Op. #96-0226.

Exempt counties must obtain the consent of the director of the Department of Archives and History to dispose of county records pursuant to Section 25-59-21. The provisions of Section 25-59-21 are superseded by the provisions of S.B. 2832 with respect to nonexempt local governmental entities. Hilliard, May 31, 1996, A.G. Op. #96-0341.

Prior to destroying lapsed financing statements, a chancery clerk must obtain the consent of the director of Archives and History and, if the county participates in Local Government Records Committee matters, the consent of the Local Government Records Committee. Miller, May 21, 1999, A.G. Op. #99-0238.

§ 25-59-29. Reproduction of records and storage of copies; destruction of originals.

OPINIONS OF THE ATTORNEY GENERAL

So long as "imaged" reproduction complies with requirements of Section 25-59-29 public funds customers of state banks are not required to preserve original canceled warrant and/or pay certificate, or other items which may be "imaged" by state banks, but these customers would be required to preserve copies returned to them by banks, in accordance with such statutes as may be applicable. Neely Aug. 20, 1993, A.G. Op. #93-0665.

Custodians of PERS documents may use microfilming or other imaging technology to create an exact, high-quality reproduction of original documents and may destroy the paper documents if they follow the procedures set forth in Section 25-59-29. Rubisoff, January 22, 1996, A.G. Op. #95-0870.

CHAPTER 60.

LOCAL GOVERNMENT RECORDS

§ 25-60-1. Local Government Records Committee.

OPINIONS OF THE ATTORNEY GENERAL

A county office of the public defender is governed by the provisions of Sections 25-60-1 et seq. and, therefore, should contact the Local Government Records Committee to develop a records control schedule for the office. Fortner, Nov. 10, 2000, A.G. Op. #2000-0661.

§ 25-60-5. Document filing fee.

OPINIONS OF THE ATTORNEY GENERAL

Pursuant to Section 25-60-5(2), court documents accepted for filing as public records in participating counties are not subject to the filing fee, since costs associated with the filing of court documents are already set by statute and/or court rules. Hilliard, September 13, 1996, A.G. Op. #96-0579.

Section 25-60-5(1) applies only to records for which a fee is charged for filing, such as building permits, deeds and court records. Howell, Apr. 11, 2003, A.G. Op. 03-0168.

Section 65-9-19 authorizes a board of supervisors, within the last six months of the boards of supervisors' terms, to advertise and award a contract for a state aid project as long as the requirements of the section have been met. Barry, Apr. 25, 2003, A.G. Op. 03-0175.

CHAPTER 61.

PUBLIC ACCESS TO PUBLIC RECORDS

Sec.
25-61-3. Definitions.
25-61-5. Public access to records; written explanation required when records cannot be produced within specified time; form and retention of denials [Repealed effective July 1, 2024].
25-61-10. Access to records stored, manipulated or retrieved by sensitive software; acquisition, modification, etc., of systems, etc., used for creation or maintenance of public records data bases.
25-61-11.2. Exemption for certain information technology records.

§ 25-61-1. Short title; legislative policy regarding right of access to records.

OPINIONS OF THE ATTORNEY GENERAL

A municipality that is participating in a self insured pool is a public body carrying out a governmental function and is subject to the Public Records Act in the conduct of such activities. Lee, Nov. 6, 1991, A.G. Op. #91-0855.

Generally, books and papers owned by municipal library are public records subject to Mississippi Public Records Act, codified at Miss. Code Sections 25-61-1 et seq., and public has right of access to these records. Ellis, Apr. 29, 1993, A.G. Op. #93-0299.

Although the confidentiality provisions of BellSouth's tariffs have been approved by the Mississippi Public Service Commission, it could not be said that such is sufficient to override the Public Records Act. Leggett, June 12, 1998, A.G. Op. #98-0242.

There is no general exemption from the Public Records Act for information regarding present or former inmates of the Department of Corrections; while social security numbers are exempted from public disclosure in certain instances, there is no specific exemption for inmate social security numbers contained in files maintained by the Department of Corrections. Johnson, June 9, 2000, A.G. Op. #2000-0279.

Generally, most medical records in a mental commitment file in the office of the Chancery Clerk will fall under one or more of the exemptions to the Public Records Act; exempt records should not be released or kept open to the public absent a court order or authorized consent. McGee, Dec. 2, 2002, A.G. Op. #02-0543.

Reports assessing the vulnerabilities of state and county computer systems from internal and external intrusion, or hacking, which are being conducted by the state through the State Department of Homeland Security, are exempt from the Public Records Act of 1983. McLeod, July 30, 2004, A.G. Op. 04-0342.

Names of applicants found on applications for employment are exempt from the Public Records Act. Moore, July 1, 2005, A.G. Op. 05-0316.

An appraisal prepared in anticipation of litigation is attorney work product and is exempt from the Mississippi Public Records Act. Graham, July 1, 2005, A.G. Op. 05-0291.

No state law would prevent the provision by a county tax collector/assessor of information as to the amount due or paid by an individual for a motor vehicle privilege license to the municipalities. Ray, Dec. 16, 2005, A.G. Op. 05-0560.

Whether county emergency medical service records, including health conditions of persons injured in an accident, constituted exempt "hospital records" under Section 41-9-68 or were otherwise privileged under Section 13-1-21 is a factual question. Lamar, Dec. 16, 2005, A.G. Op. 05-0595.

No state law provisions can be found which guarantee privacy rights to persons who apply or pay for public utility services, or which grant a specific exclusion from disclosure of information of such a nature held by a public body. Baker, July 10, 2006, A.G. Op. 06-0291.

Any public record which is maintained by a municipality is subject to review by the public, regardless of the age of the record or the fact that the administration has changed. Baker, July 10, 2006, A.G. Op. 06-0291.

Drafts of official minutes which have not yet been approved, notes taken by the city clerk during official meetings for use during the preparation of official minutes as well as any tape recordings made for the same purpose are subject to disclosure pursuant to the Mississippi Public Records Act. Stovall, Aug. 4, 2006, A.G. Op. 06-0359.

Where it is determined that release of parts of a report on building security issues would impede a police department's law enforcement efforts, endanger the life or safety of officers or pertain to quality control matters, a city may redact those portions from material which is to be released. Bowman, Aug. 4, 2006, A.G. Op. 06-0217.

A non-profit public utility corporation is not subject to the Mississippi Public Records Act, Miss. Code Ann. § 25-61-1, and therefore has the discretion to release or not release consumer records to law enforcement for purposes of keeping updated E-911 records, provided there is no Federal privacy law or rule prohibiting the release. Knight, February 9, 2007, A.G. Op. #07-00007, 2007 Miss. AG LEXIS 14.

§ 25-61-2. State policy regarding access to public records.

OPINIONS OF THE ATTORNEY GENERAL

The Mississippi Department of Employment Security's alien labor program is exempt from the Mississippi Public Records Act, and thus, confidential in regards to requests made by third-party advocacy groups. Fitch, Nov. 18, 2005, A.G. Op. 05-0499.

Subject to written procedures which may address concerns such as security and disruption of business, a public body must make public records available for requestors to research and copy. Robertson, Oct. 13, 2006, A.G. Op. 06-0463.

§ 25-61-3. Definitions.

The following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Public body" shall mean any department, bureau, division, council, commission, committee, subcommittee, board, agency and any other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance or resolution. The term "public body" includes the governing board of a charter school authorized by the Mississippi Charter School Authorizer Board. Within the meaning of this chapter, the term "entity" shall not be construed to include individuals employed by a public body or any appointed or elected public official.

(b) "Public records" shall mean all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body. "Public records" shall not mean "personal information" as defined in Section 25-62-1.

(c) "Data processing software" means the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications and computer networking programs.

(d) "Proprietary software" means data processing software that is obtained under a licensing agreement and is protected by copyright or trade secret laws.

(e) "Incident report" means a narrative description, if such narrative description exists and if such narrative description does not contain investigative information, of an alleged offense, and at a minimum shall include the name and identification of each person charged with and arrested for the alleged offense, the time, date and location of the alleged offense, and the property involved, to the extent this information is known.

(f) "Investigative report" means records of a law enforcement agency containing information beyond the scope of the matters contained in an incident report, and generally will include, but not be limited to, the following matters if beyond the scope of the matters contained in an incident report:

(i) Records that are compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, the disclosure of which would harm the investigation which may include crime scene reports and demonstrative evidence;

(ii) Records that would reveal the identity of informants and/or witnesses;

(iii) Records that would prematurely release information that would impede the public body's enforcement, investigative or detection efforts;

(iv) Records that would disclose investigatory techniques and/or results of investigative techniques;

(v) Records that would deprive a person of a right to a fair trial or an impartial adjudication;

(vi) Records that would endanger the life or safety of a public official or law enforcement personnel, or confidential informants or witnesses;

(vii) Records pertaining to quality control or PEER review activities; or

(viii) Records that would impede or jeopardize a prosecutor's ability to prosecute the alleged offense.

(g) "Law enforcement agency" means a public body that performs as one (1) of its principal functions activities pertaining to the enforcement of criminal laws, the apprehension and investigation of criminal offenders, or the investigation of criminal activities.

HISTORY: Laws, 1983, ch. 424, § 2; Laws, 1996, ch. 453, § 2; Laws, 2008, ch.

392, § 1; Laws, 2013, ch. 497, § 34, eff from and after July 1, 2013; Laws, 2019, ch. 423, § 6, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added the last sentence of (b).

OPINIONS OF THE ATTORNEY GENERAL

Voter registration lists and applications for voter registration are public records subject to Mississippi Public Records Act of 1983. Molpus, Jan. 16, 1990, A.G. Op. #90-0032.

Voter registration lists retained in electronic format, as in computer memory storage devices such as hard disk drives, diskettes, or magnetic tape, are subject to Mississippi Public Records Act of 1983. Molpus, Jan. 16, 1990, A.G. Op. #90-0032.

A municipality, including the water/sewer department, is a public body, and the records of such department, including meter reading lists, billings, and individual account documents, are public records. Thompson, May 13, 1992, A.G. Op. #92-0310.

Miss. Code Section 25-61-3(b) makes all of records of Justice Court dealing with both criminal cases and civil cases public records; therefore, public has right to inspect records unless they are exempted from Public Records Act (Miss. Code Sections 25-61-1 through 25-61-17) by some other provision. Erby, Apr. 14, 1993, A.G. Op. #93-0210.

Under Miss. Code Section 25-61-3(b), if public board member tape records meeting at his or her own expense for personal use, such recording is not "public record". Warren, May 12, 1993, A.G. Op. #93-0340.

The definition of "public record" contained in the statute applies to records that were created prior to July 1, 1983 and that were retained outside of the public body custody by a public body official after the expiration of his term. Hilliard, December 11, 1998, A.G. Op. #98-0641.

Neither a private nonprofit corporation nor a limited liability corporation meets the definition of a "public body". Williamson, Feb. 4, 2000, A.G. Op. #99-0674.

Criminal case files and any records related to those cases in the office of a district attorney are exempt from the Public Records Act. Carter, Mar. 2, 2001, A.G. Op. #01-0100.

As a general rule, unless state law provides a specific exemption from disclosure, records in the possession of a public body, including a municipality and its departments, would be "public records." Minniece, May 30, 2003, A.G. Op. 03-0262.

It is unclear whether a Planning and Development District (PDD) is an entity of the state or of a political subdivision so as to come within the definition of "public body." However, it is clear that, inherent in a county's membership in any PPD, is the full right of access to, inspection, and copying of the financial records of the PDD. Any bylaws or rules of the PDD to the contrary are void as against public policy. Smith, Feb. 4, 2004, A.G. Op. 03-0592.

A fire protection district formed pursuant to §§ 19-5-151 et seq. is created by a resolution and is a "public body" under the Mississippi Public Records Act. Schwartz, Mar. 5, 2004, A.G. Op. 04-0091.

Where council members consider the city manager's written recommendations, comments and information in resolving issues before the council, the notes are subject to the Public Records Act. Tynes, May 5, 2006, A.G. Op. 06-0175.

A public body is under no duty to review multiple records to compile one document which responds to a specific request, but would be under a duty to provide records to a requestor in order that the requestor may review the documents and make their own conclusions. Baker, July 10, 2006, A.G. Op. 06-0291.

§ 25-61-5. Public access to records; written explanation required when records cannot be produced within specified time; form and retention of denials [Repealed effective July 1, 2024].

(1)(a) Except as otherwise provided by Sections 25-61-9, 25-61-11 and 25-61-11.2, all public records are hereby declared to be public property, and any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body in accordance with reasonable written procedures adopted by the public body concerning the cost, time, place and method of access, and public notice of the procedures shall be given by the public body, or, if a public body has not adopted written procedures, the right to inspect, copy or mechanically reproduce or obtain a reproduction of a public record of the public body shall be provided within one (1) working day after a written request for a public record is made. No public body shall adopt procedures which will authorize the public body to produce or deny production of a public record later than seven (7) working days from the date of the receipt of the request for the production of the record.

(b) If a public body is unable to produce a public record by the seventh working day after the request is made, the public body must provide a written explanation to the person making the request stating that the record requested will be produced and specifying with particularity why the records cannot be produced within the seven-day period. Unless there is mutual agreement of the parties, or the information requested is part of ongoing negotiations related to a request for competitive sealed proposals, in no event shall the date for the public body's production of the requested records be any later than fourteen (14) working days from the receipt by the public body of the original request. Production of competitive sealed proposals in accordance with requests made pursuant to this section shall be no later than seven (7) working days after the notice of intent to award is issued to the winning proposer. Persons making a request for production of competitive sealed proposals after the notice of intent to award is issued by the public body shall have a reasonable amount of time, but in no event less than seven (7) working days after the production of the competitive sealed proposals, to protest the procurement or intended award prior to contract execution. However, in any instance where a person has filed for a protective order for a competitive sealed proposal and the court has not ruled on the protective order within ninety (90) days of filing, then the public body may proceed with awarding the contract without production of competitive sealed proposals and the contract may be protested after execution.

(2) If any public record contains material which is not exempted under this chapter, the public agency shall redact the exempted material and make the nonexempted material available for examination. Such public agency shall be entitled to charge a reasonable fee for the redaction of any exempted material, not to exceed the agency's actual cost.

(3) Denial by a public body of a request for access to or copies of public records under this chapter shall be in writing and shall contain a statement of the specific exemption relied upon by the public body for the denial. Each public body shall maintain a file of all denials of requests for public records. Public bodies shall be required to preserve such denials on file for not less than three (3) years from the date such denials are made. This file shall be made available for inspection or copying, or both, during regular office hours to any person upon written request.

(4) This section shall stand repealed on July 1, 2024.

HISTORY: Laws, 1983, ch. 424, § 3; Laws, 2008, ch. 392, § 2; Laws, 2010, ch. 501, § 1; Laws, 2016, ch. 356, § 1, eff from and after July 1, 2016; Laws, 2019, ch. 369, § 1, eff from and after July 1, 2019; Laws, 2019, ch. 443, § 3, eff from and after July 1, 2019; reenacted and amended, Laws, 2021, ch. 310, § 1, eff from and after July 1, 2021.

Joint Legislative Committee Note — Section 1 of Chapter 369, Laws of 2019, effective July 1, 2019 (approved March 21, 2019), amended this section. Section 3 of Chapter 443, Laws of 2019, effective July 1, 2019 (approved March 29, 2019), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 12, 2019, meeting of the Committee.

Amendment Notes — The first 2019 amendment (ch. 369) added the last sentence of (1)(b); and added (4).

The second 2019 amendment (ch. 443), in the first sentence of (1), inserted "and 25-61-11.2," and made a related change.

The 2021 amendment reenacted and amended the section by extending the date of the repealer for the section by substituting "July 1, 2024" for "July 1, 2021" in (4).

JUDICIAL DECISIONS

2. No violation found.

Division of Medicaid did not violate subsection (1)(b) because it waited until after an unsuccessful bidder submitted its protest to execute contracts; the statute did not require that the protest be resolved before execution, just that a reasonable amount of time be allowed for the protest to be offered, and the bidder suffered no prejudice from the early execution of the contracts. Miss. True v. Dzielak, 293 So. 3d 243, 2020 Miss. LEXIS 83 (Miss. 2020).

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Bid proposals which contractors have submitted to Highway Commission and which have been publicly read are public records, and public has right of access to these records; Highway Commission may give notice to contractors that their bid proposals will be made available to public to allow these contractors opportunity to get court orders protecting such information. Tabb, March 21, 1990, A.G. Op. #90-0181.

As the general populace has access to public records, individual consumers of a municipal water system cannot prevent a municipality from responding to reasonable requests from the public for access to public records. Thompson, May 13, 1992, A.G. Op. #92-0310.

Miss. Code Section 25-61-5 allows Attorney General's office to adopt reasonable written procedures concerning costs, time, place, and method of access to public records; such written procedures must be published or posted and may authorize production of public record at any time within fourteen working days of date of request. Erby, Apr. 14, 1993, A.G. Op. #93-0210.

Gross salaries of state employees are considered to be matter of public record within meaning of Section 25-61-5(1) but net salaries and tax exemption status of state employees are exempt from public access under provisions of Section 27-3-77. Stringer, March 23, 1994, A.G. Op. #93-0900.

Whether a police manual discloses investigative techniques is a factual question. If it does, then under Section 45-29-1 [repealed], the police department may deny in writing, a request made under Section 25-61-5, pursuant to the Mississippi Public Records Act and the requestor could resort to a court of competent jurisdiction. Evans, September 7, 1995, A.G. Op. #95-0613.

A chancery clerk was required to provide copies of public records in his possession in accordance with the Public Records Act where a request for public records was made to him, rather than the board of supervisors. Crook, Apr. 19, 2002, A.G. Op. #02-0194.

The budgets and any proposed budgets of regional libraries are public records subject to inspection. Gough, Sept. 20, 2002, A.G. Op. #02-0479.

While required to provide access to the public, municipalities and other public bodies are entitled to determine the manner in which the records are made available to the public pursuant to Section 25-61-5. Minniece, May 30, 2003, A.G. Op. 03-0262.

If the member of a municipal governing body seeking to review personnel records has need, in the course and scope of his or her duties on behalf of the municipality, to review them, he or she should be entitled to such a review. Stovall, Jan. 6, 2004, A.G. Op. 03-0683.

A municipality is entitled to adopt reasonable procedures in which its records are made available to the public pursuant to Miss. Code Ann. § 25-61-5, and may charge a fee calculated to reimburse it for, but in no case exceed, the actual cost of providing the records. Municipal aldermen or councilmen, however, are entitled to reasonable access without charge to any information required to perform the duties of their office. Haney, March 9, 2007, A.G. Op. #07-00104, 2007 Miss. AG LEXIS 100.

§ 25-61-7. Fees for costs incident to providing records.

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Under Miss. Code Section 25-61-7, when copies of public records are requested, Attorney General's office may establish and collect fees to reimburse, but in no case to exceed actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records; these fees may be collected in advance before compliance with request. Erby, Apr. 14, 1993, A.G. Op. #93-0210.

A search of the criminal records for felony convictions would be exempt from the salary cap on compensation received by Circuit Clerks. Carpenter, February 7, 1996, A.G. Op. #96-0003.

When performing criminal record checks, the District Attorney's office may only charge a fee for the actual cost associated with supplying the record to the requestor. Allgood, Jan. 30, 1998, A.G. Op. #98-0012.

There is no statutory authority for chancery clerks to charge flat monthly fees to abstractors for use of the fax machine in the office of the clerk or to charge fees for sending faxes to members of the public. Crook, Sept. 13, 2002, A.G. Op. #02-0334.

Because Section 25-61-7(2) applies not just to Geographic Information System and multipurpose cadastre information, but also "other electronically accessible data," a county may establish a standard fee scale to reimburse it for creating, acquiring and maintaining other electronically accessible data. Dowdy, Dec. 27, 2005, A.G. Op. 05-0612.

How fees shall be calculated is matter for the board of supervisors to address; however the board must make factual determinations regarding each statutorily authorized factor used in determining the standard fee scale and have those determinations recorded in the minutes. Dowdy, Dec. 27, 2005, A.G. Op. 05-0612.

The board of supervisors must establish and approve, as evidenced in the minutes, any standard fee scale authorized by Section 25-61-7(2), as well as any other "pricing policy." Dowdy, Dec. 27, 2005, A.G. Op. 05-0612.

While the board of supervisors may require commercial users of the data to pay a premium for the data, the board may not restrict the data's use to "private use only" or prohibit resale of the information acquired. Dowdy, Dec. 27, 2005, A.G. Op. 05-0612.

Provided the costs and expenses are calculated pursuant to a lawfully enacted policy designed to capture the "actual cost" of providing public records as provided by Section 25-61-7, the fact that the initial estimate was lower than the actual amount necessary to cover the costs would not preclude a public body from collecting that additional amount. Baker, July 10, 2006, A.G. Op. 06-0291.

A municipality is entitled to adopt reasonable procedures in which its records are made available to the public pursuant to Miss. Code Ann. § 25-61-5, and may charge a fee calculated to reimburse it for, but in no case exceed, the actual cost of providing the records. Municipal aldermen or councilmen, however, are entitled to reasonable access without charge to any information required to perform the duties of their office. Haney, March 9, 2007, A.G. Op. #07-00104, 2007 Miss. AG LEXIS 100.

§ 25-61-9. Trade secrets and confidential commercial or financial information.

HISTORY: Laws, 1983, ch. 424, § 5; Laws, 1988, ch. 406, § 1; Laws, 1990, ch. 442, § 12; Laws, 1990, ch. 507, § 15; Laws, 1996, ch. 453, § 3; Laws, 2015, ch. 431, § 4; Laws, 2015, ch. 484, § 3; Laws, 2016, ch. 359, § 1; Laws, 2017, ch. 400, § 15, eff from and after Jan. 1, 2018; Laws, 2018, ch. 350, § 1, eff from and after July 1, 2018; brought forward without change, Laws, 2019, ch. 369, § 2, eff from and after July 1, 2019.; brought forward without change, Laws, 2021, ch. 418, § 2, eff from and after passage (approved April 5, 2021).

Editor's Note — This section was brought forward without change by Laws of 2021, ch. 418, § 2. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes — The 2019 amendment brought the section forward without change.

The 2021 amendment, effective April 5, 2021, brought the section forward without change.

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A report written by a consultant hired by a city which contains information projecting the cost to the city to install a telecommunications system and places a valuation on facilities of a private provider of telecommunications services in the city who might compete against the city in its effort to install a telecommunications system is not protected from disclosure under the statute. Dunbar, April 17, 1998, A.G. Op. #98-0180.

Before releasing names, addresses and telephone numbers maintained by his office, a county E-911 Coordinator should give notice pursuant to the statute to the third party and allow the third party a reasonable period of time to obtain a court order protecting such records as confidential commercial information; this would apply to any trade secrets or confidential, commercial, or financial information provided by BellSouth pursuant to its contract with the county. Leggett, June 12, 1998, A.G. Op. #98-0242.

A county tax assessor and collector should follow the procedure set out in the statute before releasing information collected about a real estate sales transaction with regard to an individual who notified the tax assessor and collector that he considered such information to be confidential. Allen, Mar. 9, 2001, A.G. Op. #01-0111.

Each circuit clerk is responsible for making available public records of his office when properly requested. Information such as social security numbers, telephone numbers, dates of birth and age information must be erased or removed from such records before they are made available to the public. There is no specific statutory direction on the manner in which such information is to be removed. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

The intent of Section 25-61-9 is to provide notice to third parties that a public records request has been made of sensitive and confidential records and to provide the third parties with the opportunity to seek a court order protecting such records from public review. Montague, July 8, 2005, A.G. Op. 05-0262.

§ 25-61-10. Access to records stored, manipulated or retrieved by sensitive software; acquisition, modification, etc., of systems, etc., used for creation or maintenance of public records data bases.

(1) Except as otherwise provided in Section 25-61-11.2, any public body that uses sensitive software, as defined in Section 25-61-9, or proprietary software must not thereby diminish the right of the public to inspect and copy a public record. A public body that uses sensitive software, as defined in Section 25-61-9, or proprietary software to store, manipulate, or retrieve a public record will not be deemed to have diminished the right of the public if it either: (a) if legally obtainable, makes a copy of the software available to the public for application to the public records stored, manipulated, or retrieved by the software; or (b) ensures that the software has the capacity to create an electronic copy of each public record stored, manipulated, or retrieved by the software in some common format such as, but not limited to, the American Standard Code for Information Interchange.

(2) A public body shall provide a copy of the record in the format requested if the public body maintains the record in that format, and the public body may charge a fee which must be in accordance with Section 25-61-7.

(3) Before a public body acquires or makes a major modification to any information technology system, equipment, or software used to store, retrieve, or manipulate a public record, the public body shall adequately plan for the provision of public access and redaction of exempt or confidential information by the proposed system, equipment or software.

(4) A public body may not enter into a contract for the creation or maintenance of a public records data base if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are online or stored in an information technology system used by the public body.

HISTORY: Laws, 1996, ch. 453, § 4, eff from and after July 1, 1996; Laws, 2019, ch. 443, § 5, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added the exception at the beginning of (1).

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It was proper for the Workers' Compensation Commission to charge $75.00 per hour for six of the hours of labor required to construct and test a search program to retrieve certain data from its database in response to a request for such data. Hardwick, June 16, 2000, A.G. Op. #2000-0285.

Although the software itself is not a public record, in order to provide access to the public records, under subdivision (1)(a) of this section, a public body may choose to make the software available to the public, but is not required to do so. Thompson, June 4, 2004, A.G. Op. 04-0193.

§ 25-61-11. Records exempted or privileged by law.

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Accident reports; some investigative offense reports and other documents including witness statements, police radio logs, taped communications or officer's daily reports; and personnel records and applications for employment are exempted from Public Records Act. Whitmore, Oct. 14, 1992, A.G. Op. #92-0793.

Medical information contained in "run reports" from City EMS units which contain name of person treated, address of response, physical data, summary of any medical treatment or other action taken in response to run and other pertinent information, is confidential other information in reports is public. Lawrence Oct. 6, 1993, A.G. Op. #93-0592.

The Department of Public Safety may implement the federal "Driver's Protection Act of 1994" by enacting regulations, if necessary, under the Mississippi Administrative Procedures Act (Miss. Code Section 25-43-1.101 et seq.) to effectuate federal exemptions to the Mississippi Public Records Act pursuant to Miss. Code Section 25-61-11, and if it so desires, may adopt regulations pertaining to an "opt-out" system. Ingram, Aug. 29, 1997, A.G. Op. #97-0515.

§ 25-61-11.2. Exemption for certain information technology records.

The following information technology (IT) records shall be exempt from the Mississippi Public Records Act of 1983:

(a) IT infrastructure details, including network architecture, schematics, and IT system designs;

(b) Source code;

(c) Detailed hardware and software inventories;

(d) Security plans;

(e) Vulnerability reports;

(f) Security risk assessment details;

(g) Security compliance reports;

(h) Authentication credentials;

(i) Security policies and processes;

(j) Security incident reports; and

(k) Any audit, assessment, compliance report, work papers or any combination of these that if disclosed could allow unauthorized access to the state's IT assets.

HISTORY: Laws, 2019, ch. 443, § 1, eff from and after July 1, 2019.

Cross References — Mississippi Public Records Act of 1983, see § 25-61-1 et seq.

§ 25-61-13. Mississippi Ethics Commission to enforce chapter; procedure upon complaint by any person denied right to inspect public records; petition to chancery court to enforce or appeal order.

JUDICIAL DECISIONS

1. In general.

Circuit court's ruling on a public records issue was beyond the limited jurisdiction conferred by the chancery court's transfer order, in which that court explicitly retained jurisdiction of the public records action. Pryer v. Gates, 312 So. 3d 741, 2021 Miss. App. LEXIS 108 (Miss. Ct. App. 2021).

Circuit court abused its discretion in dismissing the citizen's mandamus petition and failing to compel the sheriff to execute process on public officials named as defendants in the citizen's public records action; the citizen had standing to seek mandamus and had a right to relief as he properly sought service of process, the sheriff was required by law to execute process, and the citizen had no other adequate remedy at law. Pryer v. Gates, 312 So. 3d 741, 2021 Miss. App. LEXIS 108 (Miss. Ct. App. 2021).

CHAPTER 62

DISCLOSURE OF PERSONAL INFORMATION OF SECTION 501(C) ENTITY.

Sec.
25-62-1. Definitions.
25-62-3. Public agencies prohibited from requiring certain Section 501(c) entities to provide personal information; public agencies prohibited from disclosing personal information in the possession of the agency; exemptions.
25-62-5. Injunctive relief; costs of litigation awarded in judgment rendered.
25-62-7. Penalties.
25-62-9. Relation to Mississippi Campaign Finance statutes.

§ 25-62-1. Definitions

As used in this chapter, the following words and phrases shall have the meanings as defined in this section unless the context clearly indicates otherwise:

(a) "Personal information" means any list, record, register, registry, roll, roster or other compilation of data of any kind that directly or indirectly identifies a person as a member, supporter or volunteer of, or donor of financial or nonfinancial support to, any entity organized under Section

501(c) of the Internal Revenue Code. Personal information does not include information reportable to the Secretary of State pursuant to Section 79-11-503(1)(b).

(b) "Public agency" means any state or local governmental unit, however designated, including, but not limited to, this state; any department, agency, office, commission, board, division or other entity of this state; any political subdivision of this state, including, but not limited to, a county, city, township, village, school district, community college district or any other local governmental unit, agency, authority, council, board or commission; or any state or local court, tribunal or other judicial or quasi-judicial body.

HISTORY: Laws, 2019, ch. 423, § 1, eff from and after July 1, 2019.

§ 25-62-3. Public agencies prohibited from requiring certain Section 501(c) entities to provide personal information; public agencies prohibited from disclosing personal information in the possession of the agency; exemptions.

(1) Notwithstanding any law to the contrary, and subject to subsection (3), a public agency shall not do any of the following:

(a) Require any entity organized under Section 501(c) of the Internal Revenue Code to provide the public agency with personal information.

(b) If in the possession of personal information, a public agency shall not release, publicize or otherwise disclose that personal information without the express written permission of every identified member, supporter, volunteer or donor of the Section 501(c) entity as well as the Section 501(c) entity that received their membership, support, volunteer time or donations.

(c) Request or require a current or prospective contractor with the public agency to provide the public agency with a list of entities organized under Section 501(c) of the Internal Revenue Code to which it has provided financial or nonfinancial support.

(2) Personal information shall be exempt from disclosure under the Mississippi Public Records Act.

(3) This chapter does not preclude either of the following:

(a) Any lawful warrant for personal information issued by a court of competent jurisdiction; or

(b) A lawful request for discovery of personal information in litigation if both of the following conditions are met:

(i) The requestor demonstrates a compelling need for the personal information by clear and convincing evidence; and

(ii) The requestor obtains a protective order barring disclosure of personal information to any person not directly involved in the litigation. As used in this subparagraph, "person" means an individual, partnership, corporation, association, governmental entity or other legal entity.

HISTORY: Laws, 2019, ch. 423, § 2, eff from and after July 1, 2019.

§ 25-62-5. Injunctive relief; costs of litigation awarded in judgment rendered.

(1) A person alleging a violation of this chapter may bring a civil action for appropriate injunctive relief.

(2) A court, in rendering a judgment in an action brought under this section, shall award all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, to the complainant in the action if the court determines that the award is appropriate.

HISTORY: Laws, 2019, ch. 423, § 3, eff from and after July 1, 2019.

§ 25-62-7. Penalties.

A person who knowingly violates this chapter is guilty of a misdemeanor punishable by imprisonment of not more than ninety (90) days or a fine of not more than One Thousand Dollars ($1,000.00) or both.

HISTORY: Laws, 2019, ch. 423, § 4, eff from and after July 1, 2019.

Cross. Reference — Imposition of standard state assessment in addition toall court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 25-62-9. Relation to Mississippi Campaign Finance statutes.

The requirements of this chapter shall not affect any provisions of the Mississippi Campaign Finance statutes provided in Section 23-15-801 et seq.

HISTORY: Laws, 2019, ch. 423, § 5, eff from and after July 1, 2019.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section by substituting “Section 23-15-801 et seq.” for “Sections 23-15-801 et seq.” at the end of the section. The Joint Committee ratified the correction at its August 12, 2019, meeting.